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# CITIZENSHIP OF THE USSR

## (A LEGAL STUDY)

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## PREFACE

The modern world is not only a world of fast-flowing time and global change immediately and vitally affecting millions of men and women. It is also a world that is becoming increasingly "small", owing to the fast-developing means of communication. It is shrinking, as it were, before our very eyes. Today one can, in a matter of a few hours, reach such spots on the globe as one could hardly ever visit previously. The human streams moving in all directions, from country to country, increase with every year. Business and personal contacts grow closer, and the exchange of information, know-how and services intensifies. Internationalisation of all aspects of the life of society, with its ever quickening tempo, is one of the most striking developments in man's current existence.

This process is making its impact on national as well as international law, on all social rules regulating man's conduct, in a great variety of ways. The social value of international law and national legal systems largely depends on the extent to which law corresponds to men's current needs, goals and desires. Simultaneously, law is an active factor in the development and restructuring of the existing relations in society.

This makes obvious the desirability of reciprocal study of legal systems along with the legal views and conceptions on which they are based. The present writer sets himself to acquaint the readers with a highly important part of Soviet law, namely citizenship, remembering above all that citizenship rules have to do with an area of social relations directly linked with the processes of the current reality mentioned above. The new Constitution of the USSR of 1977 is having a salutary effect in consolidating the legal bases of the constitutional and public life of the Soviet Union. The Constitution, however, as the Fundamental Law of the Union, reinforces the main, fundamental prin-

ciples, which have then to be brought out and concretised in other statutes.

A very important statute, adoption of which was envisaged by the Constitution, is Citizenship of the USSR Act passed on December 1, 1978 by the Tenth Session of the Ninth Supreme Soviet of the USSR.[1]

The new Act, while reproducing provisions of earlier citizenship Acts that have been substantiated in practice by socio-political and constitutional development, is much richer in content that the preceding legislation passed more than forty years ago.

"That is understandable," V. V. Kuznetsov, the First Deputy Chairman of the Presidium of the USSR Supreme Soviet, said in moving the Bill in the Supreme Soviet, "because there have been far-reaching reforms in recent years under the leadership of the Communist Party that have affected literally every aspect of the life of Soviet society; and the international standing of our country has risen immeasurably.

"Implementation of the Soviet Peace Programme has immensely furthered development of the USSR's political, economic, scientific and technical, and cultural relations with other countries. This substantial broadening of contacts, above all with the countries of the socialist community, and their varied character, could not help posing a number of concrete legal points, which have been carefully examined during the drafting of this Bill." The provisions of the Act correspond fully to current needs and are aimed at further extending the democratic principles inherent in Soviet citizenship.

Naturally enough, Soviet legislative practice on matters of citizenship and the legal status of the individual differs, often materially, from the practice adopted in other countries. Relying on the readers' goodwill and attention, the author is guided by the desire to contribute, however modestly, to the growth of the spirit of understanding and constructive co-operation.

[1] In accordance with the resolution of the USSR Supreme Soviet "On the Coming into Force of the Citizenship of the USSR Act, 1978" of December 1, 1978, this Act will come into force on July 1, 1979. The Citizenship of the USSR Law of 1938 will be considered to have expired as of that date.



# Chapter 1

## THE CONCEPT OF CITIZENSHIP

### 1. Types of Citizenship in History

Citizenship is one of the legal institutions whose content and meaning in society depend wholly on the relationship between either the individual or the population at large and state power or authority.

The most common characteristics of the state are (i) the territorial principle on which the population is organised and (ii) the institution of public authority not coinciding immediately with the population. These characteristics are closely related.

The main thing about the territorial organisation of population, i.e. its division by territory, is just that by means of such division conditions arise for the establishment of definite relations between the population and government.

The political (state and law) organisation of population replaced in due time kinship relations common to the tribal system. In ancient Greece, for instance, Athenian common public law, which emerged together with the state, did not extend, as tribal and clan legal customs had done, to kinsmen wherever they might be, but exclusively to citizens residing within the territorial limits of the state.

The very first—slave-owning—state in history, beset with profound class antagonisms, could not exist even then without an elaborate legal and political differentiation of its citizens and subjects.

Citizenship in antiquity, as a certain form of state consolidation of the free population, was necessary because it was only as an equal citizen of slave society that a free man could enjoy the right to own private property.

In the domination of the ancient forms of ownership lay the explanation of the main characteristics and political institutions of slave democracy.

Citizenship in antiquity, which was an association of free and equal citizens, was based on the collective ownership and exploitation of tens of thousands of slaves. Slaves had no public, property or individual rights. They were regarded neither as citizens nor generally as human beings.[1] Ideologists of slave society excluded from the notion of the people proper not only slaves, but also the numerous dependent sections of population with curtailed rights.

Simultaneously, under slavery no equal legal capacity existed for the whole of the free population either. The Athenian democracy, with its most advanced state organisation in the ancient world, withheld political rights from a great many free persons. Citizenship there was a privilege enjoyed by a relatively limited proportion of free persons.

The question as to the number of citizens was, along with other vital political issues, an object of intense struggle between the people and the oligarchy in Athens.

The striving to limit as much as possible the number of its citizens was inherent in the slave democracy. In Athens, lists of citizens were systematically checked in each community in turn, as an important public measure. In 445 B.C., under Pericles, 4,000 were deprived of citizenship as a result of such a "purge". Persons deprived of citizenship usually had their property confiscated and were sold into slavery. To limit the number of citizens special laws were passed stating the terms on which citizenship could be acquired. A law passed by the Popular Assembly of Athens in 450 B.C., at the suggestion of Pericles, made an Athenian parentage on both sides an express condition of admitting to the franchise.[1]

Only citizens could take part in the political life of society. By citizenship was understood the legal-political status which ensured a person in ancient society a maximum of rights, the main of them being the right to participate in public life.[2] Nevertheless, even full citizens enjoyed privileges only within their own *polis*. Beyond its boundaries, they were mere aliens without any rights at all.

As for Roman citizenship, its formation was substantially influenced, among other historical factors, by the very form of the emerging state. The free population of the Roman republic, both in the Roman community itself and in the conquered provinces, was divided into several groups, each possessing legal capacity in a markedly different degree. The Roman citizens (*cives*) alone enjoyed full political and civil rights.

Roman history attests that an embittered class struggle was going on in slave society, and that in all stages of this struggle Roman citizenship was widely used as the legal prerequisite of substantial privileges. And while, as a result of an intense class struggle between them, the two estates of free Roman citizens, patricians and plebeians, no longer differed by their legal capacity at the turn of the 3rd century B.C. the freedmen were still citizens with curtailed rights (*cives mituto jure*). Certain rights, granted by Rome to the Latin provinces—which did not include the right to take part in the Roman political life—on the whole amounted to a legal status known as Latin citizenship. Eventually, it was extended to free inhabitants of other than Latin descent as well. As in Athens, the question of the number of full Roman citizens figured prominently in the programmes of diverse political parties in Roman society.

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[1] Aristotle, the exponent of the slave owners' anti-democratic ideology, maintained that slavery was consistent with the laws of nature and that the basic social inequality of the free man and the slave was the groundwork of political life.

In the first book of the *Politics*, Aristotle spelled out his view on the relation between slavery and political power. To him, slavery was related neither with law nor with public affairs in general, but existed merely as a socio-economic fact exclusively within the *oikonomia* whose internal life was, in his view, essentially non-political. It was not by chance that Aristotle placed at the hub of the political life of contemporary society the concept of *polis* as a community of free and equal citizens. The supreme blessing of *polis* citizenship, he believed, was altogether beyond the reach of a slave. Aristotle refused to see any political principles in slavery, holding that government could have to do with none but free and equal persons.

[1] See *The Works of Aristotle*, Vol. II, Chicago, 1952, p. 565.

[2] It is worth noting that in Aristotle's language *polity* means not only *state authority, the mode of public life, constitution* (in the proper sense), and *form of government*, but also *citizenship*.

With the expansion of the Roman state and development of economic relations between provinces, the legal status of the population was levelling out. This process terminated in a major social reform effected in the later Roman society—the publication in 212 A.D. of the Edict of Caracalla, which granted Roman citizenship rights to all free-born inhabitants of the Roman Empire.[1]

When analysing the socio-political content of citizenship in slave society, it must be borne in mind that never in the whole history of the latter was the principle of the legal equality of free-born inhabitants of the same social significance as the division into the free-born and the slaves. With the fall of the Roman Empire, the already rather limited principle of the legal equality of free-born inhabitants, too, finally disappeared.

Feudal society and the state are characterised by the serf's personal dependence on and obligation to work for the landowner, and by division into estates or social groups, each with a distinct, usually hereditary, legal status. The fact that the serf was forced by extra-economic methods to work for the landowner implied that the latter wielded political power.

The fief became an independent political unit—a mark, a principality, a county, etc.—within which the feudal lord exercised his sovereign will, wielding public authority and regarding the inhabitants as his vassals. Vassalage was thus the legal expression of the serf's personal dependence on the lord. The serfs, who formed a more or less uniform class, had no public rights whatsoever, and very few individual rights. In that situation their vassalage was an official expression of their being bonded to the land owned by the lord, and the latter's partial ownership of the peasant's person.

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[1] By that time the division into citizens and non-citizens had finally outlived itself, the entire population becoming the Emperor's *subjects*. Moreover, the old division failed to meet the fiscal interests of the state, clashing with emerging Roman law which dealt with the property-owner as such, without distinction of social status. The existence of population groups, each with a different legal status, was an obstacle to the establishment of uniform rules of Roman law, creating great difficulties for the courts and administrative bodies.



Relationships within the landlord class rested on the hierarchy of landed property. In consequence of this, legal relationships between independent parties with reciprocal rights and duties were based on contract. The feudal contract expressed in legal terms the vassalage of small gentry, who owed fealty and military service to their respective lords. Allegiance within the landowner class had a definite social meaning and provided, after a fashion, for the division of economic and political authority.

With the establishment of absolute monarchy, when state power was concentrated and nation-states emerged, the institution of allegiance took shape, whereby the entire population became the king's subjects. Common allegiance under absolute monarchy gave expression in particular to the centralisation of government and concentration of the rule of the lords over the serfs. The difference in the legal status of the different classes and social strata in feudal society, however, remained. Each social estate had a legal status of its own, depending on its prescribed legal place in the state. Although the peasant's personal dependence on the lord of the manor was expressed in a great diversity of forms, ranging from serfdom, which was little different from slavery, to the inequality of the different estates, feudalism was marked by the absence of any signs of public legal capacity and by substantial civil deficiency.

In the latter half of the Middle Ages, as a result of the steadily developing division of labour, there sprang up trade and craft communities which eventually turned into towns. That was not merely an economic process. Rebelling successfully against their feudal lords, the towns gained political independence and made their own laws from which gradually arose the institution of medieval urban citizenship, as opposed to feudal vassalage. On being admitted to an urban community, the new citizen received certain public and civil rights, such as full individual freedom, the right to be tried by the town courts alone, the right to take part in elections to the town council, the right to dispose freely of and bequeath his property, and so on. From meaning a "city dweller", the word *citizen* came gradually to denote a free individual possessed of a certain range of political and property rights. In reality, it was only the bigger merchants and producers, the "patriciate", who enjoyed urban

citizenship rights in full. Since there was no single legal status for city dwellers, there was no single institution of urban citizenship.

Under absolute monarchy, when the estates of feudal society began to disintegrate, the cities lost their independence. Urban citizenship also disappeared, being replaced by allegiance to the absolute monarch.

The capitalist system, which succeeded feudalism, rests on private capitalist ownership of the means of production and on the exploitation of wage workers who own no means of production and are obliged to sell their labour power to capitalists.

The masses, inspired by the democratic slogans of liberty and equality which the bourgeoisie had proclaimed, took an active part in the revolutionary struggle against feudalism. The watchword of the bourgeois revolution was, "Nobody is a subject any longer!" Rejecting the word *subject* as the symbol of political deprivation and oppression, the French "Declaration of the Rights of Man and of the Citizen" (1789) introduced the notion of *citizen* with which was associated the idea of the legally free individual entitled to take part in political affairs.

By that time, the theory of bourgeois citizenship had been elaborated in detail and presented systematically in works by bourgeois ideologists. Jean Jacques Rousseau regarded citizenship as the expression of individuals' membership in the state entitling them to the exercise of state power. Rousseau distinguished between *citizens* as those participating in sovereign rule, and *subjects* as those subjected to the laws of the state.[1]

The ideas of Rousseau and other exponents of natural law left their imprint on the "Declaration of the Rights of Man and of the Citizen" of 1789.

The conception of the rights of man and of the citizen, which was closely bound up with the general notion of citizenship, arose in the course of the bourgeoisie's struggle against the absolutist feudal regime, and was simultaneously the expression of the economic and political demands of the bourgeoisie.

[1] See Jean Jacques Rousseau, *Du contrat social*, Paris, 1955, p. 69.



It is significant that the ideologists of the revolutionary bourgeoisie linked the notion of *citizen* with the principle of private ownership. Paul Holbach, who gave the most systematic exposition of the ideas of social philosophy of the bourgeois Enlightenment, wrote that only a property-owner was a real citizen.

Bourgeois citizenship emerged as a means of safeguarding, in the specific conditions of capitalist society, the privileges of the economically and politically dominant bourgeoisie.

Unlike feudal vassalage, bourgeois citizenship no longer demarcates the borders between the classes, fixing no special legal position in the state for each. Appearing as a symbol and a means of consolidating the unity of a nation within the limits of a state, it, along with other legal institutions, is, in fact, a more perfect and flexible political weapon of domination for the ruling class. Karl Marx revealed the social substance of bourgeois citizenship, showing that the rights promulgated in the most radical of the bourgeois constitutions were actually the specific rights enjoyed by the members of a society in which private property dominates.[1]

With the establishment of citizens' legal equality and expansion of international trade, it becomes increasingly necessary to define exactly who is a citizen and on what terms one can acquire and lose citizenship. In the 19th century, citizenship law was evolved and enacted in Europe and, eventually, elsewhere.

In considering questions connected with the specific features of the legal regulation of citizenship by states of the same historical type, we start from Marx's statement that "the same economic basis—the same from the standpoint of its main conditions—due to innumerable different empirical circumstances, natural environment, racial relations, external historical influences, etc." can show "infinite variations and gradations in appearance, which can be ascertained only by analysis of the empirically given circumstances".[2]

[1] "The practical application of man's right to liberty is man's right *to private property*" (Karl Marx, Frederick Engels, *Collected Works*, Vol. 3, Moscow, 1975, p. 163).

[2] Karl Marx, *Capital*, Vol. 3, Moscow, 1974, p. 792.

The formation of bourgeois citizenship laws was influenced to a certain extent by the specific features of the development, economic needs, intensity of the class—and sometimes national—conflicts, foreign relations, and other circumstances peculiar to individual countries.

For instance, owing to the colonial character of the British Empire, British law distinguished, even in the bourgeois age, between the formal status of a "British subject" and that of a "British national".

As a part of the superstructure, the laws of a bourgeois state, including citizenship laws, in the last resort depend on economics and are ancillary to it. This is especially obvious from the legal treatment of questions relating to the emigration of working people who, in their search for employment, have to go to other countries, change their citizenship and, often enough, become stateless persons. Mass emigration of labour under capitalism, spurred on by economic integration, is the most frequent cause of the change of citizenship.

Thus, in the course of history, one type of state was replaced by another, each historical type of state having a definite type of citizenship corresponding to it. All basic characteristics of one type of citizenship or another inhere in the nature of the social system, in the class nature of the state. For all the distinctiveness of every pre-socialist type of state, there still remains one thing—the main thing—that they have in common. It is their exploitative nature. Accordingly, the types of citizenship and allegiance to be found in them have this in common that they all are a means of exercising class domination.

Socialism has brought forth and developed essentially new forms of men's political and legal relations in society. Their concrete expressions are highly diverse, especially where they are concerned with relations between citizens and the state. Socialist relations have brought about both the individual's new position in the state and his new, heretofore unknown, relation to the state.

Socialist citizenship has essential features of its own distinguishing it from all previous types of citizenship.

First of all, it is the citizenship of a state in which power belongs to the people itself. Socialist citizenship affords a person the opportunity of active and decisive involvement



in every sphere of the life of society—the economic, political and public.

Socialist citizenship does not boil down to the individual's legal relation to the state, transcending it by far, because socialist citizenship implies the individual's *involvement* in socialist society, which is a community of working people, real masters of their destiny.

### 2. The Legal Meaning of Citizenship

To explain the full meaning of the notion of citizenship as a specific legal phenomenon, we must give it a scientific definition. The definition of a phenomenon implies, of course, giving a clear, formula-like description of its main structural elements and the more essential of their relations. A general definition of citizenship may be formulated in the following way:

citizenship is a definite legal relation between person and state, entailing legal consequences for the person.

In the very construction of this definition one can distinguish the following three principal interrelated elements:

(a) the specific legal relation between person and state (the core of the definition);

b) the legal consequences ensuing for a person from the fact of his citizenship;

(c) the relation between these two elements.

There is no uniform conception of the specific legal relation between person and state in Soviet jurisprudence. Hence there is no standard terminology for its denotation.

Citizenship is often described as a "person's belonging to a state".[1] This phrase, however, fails to express the meaning of the notion. It may be interpreted as a person's membership of a state, but this may essentially distort the concept of a state; as a person's dependent condition, not far removed from allegiance; as a person's being under the jurisdiction of a state, and so on.

Citizenship is also defined as "legal affiliation", "affilia-

[1] Naturally, one's "belonging to a state" is not to be understood literally, as implying the state's ownership of its citizens. The rudimentary character of this expression, which used to denote allegiance, is also obvious. While preserving this traditional expression, one must bear in mind its new interpretation.

tion fixed in law", "permanent legal affiliation", and so on.

Some Bulgarian state-law experts, for instance, regard citizenship as a person's "political affiliation" to a state.[1] This formula implies a person's affiliation to citizenship of a state or—which is essentially the same thing—a person's having citizenship of the state.

According to some definitions, citizenship is neither a right nor a sum-total of rights but is merely a prerequisite to the possibility of applying legal rules to a person. Some writers hold that citizenship, as affiliation (or belonging) to a state, "entails" certain legal consequences for a person. All these definitions, however, completely disregard the reasons why citizenship should be a "prerequisite" to the emergence of legal consequences for a person.

Other writers stress that citizenship "entails", and even "gives" the individual, a definite complex of rights and duties. But this equally fails to explain what a "person's affiliation to a state" means and why it entails rights and duties.

Some writers see the legal relationship between person and state as a sum-total of the person's rights and duties with relation to the state or as both person and state having rights and duties with relation to each other. These rights and duties already appear as citizenship itself, not as the main legal consequence of possession of citizenship. A citizen's legal status is viewed, accordingly, not as the expression of a definite legal relation between person and state, but as the relation itself. The meaning of the notion of citizenship is, in this instance, reduced chiefly to subjective individual rights. One finds this interpretation of citizenship in works published in socialist countries. W. Ramus, a Polish jurist, writes, for instance: "Understood by citizenship is the legal affiliation of a person to a given state. In practice, it implies the sum-total of rights and duties ensuing for a given person by reason of his legal affiliation to a certain state."[2]

[1] B. Spasov, V. Tsonev, G. Zhelev, *Osnovi na dyarzhavata i pravoto na N. R. Bulgaria* (Principles of the State and Law in the People's Republic of Bulgaria), Sofia, 1954, p. 111; V. Bozhinov, B. Spasov, *Konstitutsia na N. R. Bulgaria* (Constitution of the People's Republic of Bulgaria), Sofia, 1959, p. 57.

[2] See W. Ramus, *Obywatelstwo* (Citizenship), Warsaw, 1959, p. 5.



In a sense, citizenship can certainly be regarded as a person's legal status as well. Being a specific legal relation between person and state, citizenship implies thereby that a person has a definite legal status. Simultaneously, a person's legal status is not the sole feature—although a substantial one—characterising the relations between person and state. If we reduce the content of citizenship exclusively to the legal status of a person and simultaneously regard citizenship as a prerequisite of the rights and duties ensuing for persons, it will still not be clear how a person's legal status or legal position can cause any rights and duties to extend to him.

S. I. Rusinova, a Soviet jurist, writes, for instance: "Citizenship is above all an objective right of a person, establishing the affiliation of the latter to a certain state."[1]

In our view, the idea that citizenship is a person's objective right hardly helps to elucidate the exact meaning of the notion of citizenship. If it is objective, then it makes no sense to define citizenship from a personal right. Persons' rights and duties do not exist by themselves and can only be the result of the relation between person and state. It is quite obvious that the definition of citizenship from its relationship with a person's rights and duties must express and characterise this relationship or bond.

Citizenship must not be regarded separately from a citizen's rights and duties. Simultaneously, it is hardly just to reduce citizenship as a legal relationship merely to these rights and duties. It is more logical to regard the legal relation as the content of the concept of citizenship or to regard citizenship merely as a legal fact with which are associated definite legal consequences for a person.

Hungarian jurists, for instance, understand by citizenship "such a legal relation in which the person as one of the parties concerned is under the authority of a certain state which is the other of the parties concerned, and has duties to carry out with respect to it even when leaving the territory of the state, and simultaneously may demand to be afforded rights such as the state is not obliged to

[1] S. I. Rusinova, "Consolidation of the Institution of Citizenship in the Postwar Constitutions of Bourgeois Countries", *Pravovedenie* (Jurisprudence), No. 1, 1962, p. 46.

ensure to persons not standing in the said relation to it".[1] Further on, the authors stress that the "content of the legal relation of citizenship should be seen in the specific rights and duties which citizens alone can have".[2]

Now, what social relations (or relation) is citizenship based on? As we see it, these cannot be relations which emerge on account of acquisition or loss of citizenship and are directly regulated by citizenship laws. The point is that legal relations of this kind are of a comparatively short duration. For instance, the relation arising from the acquisition of Soviet citizenship by an alien is terminated as soon as the Presidium of the Supreme Soviet of the USSR or the Union republic in which the alien resides has granted or rejected his petition. Citizenship by reason of birth, on the other hand, is usually retained through life.

In any legal relation, the parties appear as vehicles of legal rights and duties. It would, however, be wrong to regard the rights and duties that ensue from a concrete legal relation associated with citizenship (e.g. in connection with the acquisition of Soviet citizenship by a person) on the same plane with citizens' subjective rights and duties secured by objective law and, above all, by the Constitution. A specific person may enjoy subjective rights only on the basis of corresponding legal rules.

Also, citizenship as a specific legal relationship between person and state should hardly be defined as a right or a sum-total of rights. It equally cannot be regarded as a legal relation.

The substance of citizenship consists in the fact that there is a specifically definite legal relationship between person and state such as is by itself sufficient ground for the full jurisdiction of the given state to extend to the person. Citizenship characterised as a legal relationship between person and state is of a purely objective character, although it, in its turn, is a necessary condition, a prerequisite, of establishing the legal status of a citizen.

Thus, *citizenship is a legal relationship between person and state which allows the jurisdiction of the state to be extended to the person in a permanent, full and stable manner, being thereby the necessary prerequisite of the possibility of applying to the person the laws of the given state.*

[1] Beèr, Kovács, Szamel, *State Law in the Hungarian People's Republic* (Magyar Államjog. Egyetemt tankönyv, Budapest), Moscow, 1963, pp. 252-253 (translated into Russian from Hungarian).
[2] *Ibid.*, p. 255.



Anyone residing on the territory of a state, whether a citizen, an alien or a stateless person, is under the jurisdiction of the state's sovereign authority, i.e. he maintains a certain legal relation with the state.

Ivan Altanov, Corresponding Member of the Bulgarian Academy of Sciences, remarks quite correctly that the "legal relationship between person and state is not recognised as sufficient by itself to express the affiliation of the given person to the state, because even when an alien commits legal actions on its territory, he already is in contact with the state itself, wherefore this contact may be considered in a certain sense to be an expression of legal relationship".[1]

Rules of Soviet law are effective for all persons residing in the USSR, irrespective of their citizenship. The Soviet laws are therefore binding not only on Soviet citizens, but also on aliens and stateless persons, with such exceptions as have been made by Soviet laws or international treaties.

Special rules for aliens may be established under agreements with foreign countries.[2]

Soviet citizenship as a definite legal relationship between person and state ensures, first, the extension of the subjective rights laid down in the Soviet Constitution and other Soviet laws, above all, to the citizens of the Soviet Union and, second, it ensures the full extension of these rights to them, without any limitations, while aliens are not granted all rights and are not charged with all duties. Apart from that, citizenship emerges as a quite definite relationship between person and state precisely because this relationship entails legal consequences for the person, characteristic of citizenship alone and, besides, characteristic of a given citizenship alone.

Citizenship as legal relationship between person and state is characterised by the following qualities. It is

[1] I. Altanov, *Mezhdunarodno-chastnopravnata sistema na Narodnota Respublika Bulgaria* (The System of Private International Law in the People's Republic of Bulgaria), Sofia, 1955, p. 194.
[2] For a more detailed exposition of aliens' rights in the USSR see Chapter 10 of this book.

stable and has no limits in time or territory. These qualities also essentially differentiate citizenship from the specific legal relations which exist between aliens and stateless persons and the state in which they reside.

It must be noted that the legal consequences ensuing from the fact that one is a citizen can be identified as an independent element of the definition of citizenship only provisionally. In some cases—when, for instance, the content of the notion of citizenship is reduced to reciprocal rights and duties of person and state—such an identification is altogether impossible.

Nevertheless, it seems of importance to establish in the definition itself the nature of the relationship between the general concept of citizenship and the legal consequences that ensue for a person from the fact of being a citizen. In our view, in answering this question one should start from the basic proposition that citizenship is merely the necessary legal prerequisite of establishing a person's concrete legal status, not including in its concept immediately any subjective rights or duties.

Obviously enough, the legal consequences ensuing for a person from citizenship depend in the last resort on the class nature of state, on its social and government structure and, to a certain extent, on the political regime as well. Legal consequences are therefore connected with citizenship only through its being their legal prerequisite. Simultaneously, every intention to examine fully and comprehensively the content of citizenship as a legal fact is necessarily bound up with the need to analyse a citizen's legal status in society and the state.

When establishing the legal consequences for a person associated with the fact of being a citizen, one evidently should speak only of the fundamentals of a person's legal status as a citizen, of the specific rights and duties comprising these fundamentals and bearing directly and immediately on the content of citizenship. And it is the question not of "including" citizens' legal status in the definition of citizenship, but of striking the proper balance between the two legal notions.

Now, what rights and duties of a citizen which form the basis of his legal status in society and the state are directly and immediately associated with the concept of citizenship?



Some definitions of citizenship, as was already mentioned, include the rights and duties of the state itself along with a citizen's rights and duties as legal consequences. For instance, the concept of citizenship as a legal relation inevitably leads to the conclusion that the legal consequences following from citizenship consist in the reciprocal rights and duties of both person and state. On the other hand, the concept of citizenship as a special kind of legal bond which places a person permanently under the jurisdiction of the state suggests the conclusion that the legal consequences extend solely to the person, whereby his legal status in society and the state is determined.

The state has a wide spectrum of liabilities with regard to its citizens, ensuing from the effective rules of law and international agreements. Clause 6 of the Citizenship of the USSR Act, for instance, lays it down that: "In accordance with the Constitution of the USSR citizens of the USSR abroad enjoy the defence and protection of the Soviet state." Under Clause 7 of the same Act a citizen of the USSR may not be extradited to a foreign country.[1]

Is there, however, any definite range of obligations on the state's part, constituting an essential element of the concept of citizenship? To our mind, there is none. The substance of citizenship indeed consists in the fact that a citizen is permanently under the jurisdiction of the state whose

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[1] The principle of non-extradition of a country's own citizen is usually to be found among the main provisions of internationa treaties and conventions. A state can refuse to extradite also on the following grounds:

if the crime was committed by the person concerned on the territory of the party to which the requisition is addressed;

if under the laws of one of the parties criminal proceedings may not be instituted or the sentence executed, owing to the expiry of period of limitation or on other legal grounds;

if the crime is of a political nature;

if, with respect to the person concerned, sentence was imposed for the same crime or proceedings stopped in the case on the territory of the country upon which the requisition is made;

if, with respect to the person whose extradition is demanded, criminal proceedings have been instituted and the case is under investigation on the territory of the country upon which the requisition is made.

By agreement of the parties, other grounds for refusal to extradite may also be established.

citizen he is, and by dint of this alone any attempt that may be made from outside to end or breach this relationship must necessarily evoke a reaction on the part of the state. It is for this reason that dual citizenship is essentially wrongful.[1]

For persons, citizenship implies being permanently and completely under the jurisdiction of sovereign state authority whereby all the laws of the given state can be extended to them in full. The legal consequences connected with citizenship, on the whole, come to two principal points. On the one hand, it is indeed the implicit subjection of the individual to sovereign state authority; but, on the other, one who has citizenship is endowed ipso facto with a broad spectrum of rights, political rights in the first place.

In this instance, the question as to the historical type of citizenship, and so of its socio-political content and political significance, is of fundamental importance. Citizenship in states of the exploiting type is self-contradictory as regards the citizen's legal status. On the one hand, he is the object of domination. On the other, he is granted a complex of rights including public rights. It was this that enabled bourgeois scholars to distinguish between the two principal positions occupied by a citizen in the state, viz. as a subject (by reason of his absolute subjection to state authority) and as a citizen (by reason of his public legal capacity).

The fundamental distinctive feature of Soviet citizenship is precisely that it does not cause—nor can it cause—any such self-contradictory duality of status.

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[1] Dual citizenship has many sources. For the most part, it springs from collision of laws concerned with the acquisition of citizenship whether by birth or naturalisation, viz. the collision between the laws based upon *jus sanguinis* (according to which the nationality of a child follows that of one or both parents, regardless of the place of birth) and those based upon *jus soli* (according to which the nationality of a state attaches from the fact of birth within its territory and jurisdiction, regardless of the nationality of the parents); collisions between *jus sanguinis* laws in two states; collisions occurring when naturalisation does not coincide with loss of previous citizenship; collisions resulting from marriages contracted between citizens of different countries in which the principles governing citizenship do not coincide, and so on.



The socialist legal system allows every Soviet citizen to satisfy all of his social and private interests, as it confers on him a broad complex of social, economic and political rights and duties. Altogether, these rights and duties characterise the individual as a citizen of a socialist state.

Under developed socialism citizenship, as an expression of the individual's political and legal relations with the state, has a profoundly democratic content, being based on the principles of genuine people's power, socialist humanism, and proletarian internationalism. Every clause of the new Citizenship Act raises the stature and dignity of a Soviet citizen, and emphasises his or her broad rights and responsibilities to the people and the state.

Affiliation to Soviet citizenship confers on an individual all democratic rights and freedoms and all duties established for citizens under the Constitution of the USSR and other Soviet laws. A Soviet citizen enjoys political, property, labour, housing, family and other rights making it possible for him to take an active part in the economic, political and social life of the country. Of course, aliens and stateless persons also can use many of the rights comprising the legal status of a Soviet citizen. This refers especially to the property, labour and housing rights established by law. It is, nevertheless, above all the citizen of the USSR who is the subject of Soviet socialist law.

The Constitution of the USSR and Constitutions of Union republics which secure the main rights and duties of Soviet citizens, regulate the social relations on which citizens' participation in government is based, and express the more essential of the relationships between citizen and state.

The equality of citizens of the USSR is guaranteed in all fields of economic, political, social, and cultural life. Clause 1 of the 1978 Citizenship Act establishes the following special principle: "USSR Citizenship is equal for all Soviet citizens irrespective of the grounds on which it was acquired."

That means that all persons who are citizens of the USSR have the same legal status in principle, which cannot be altered in accordance with the grounds for acquiring such citizenship.

This democratic provision, which has been introduced for the first time in citizenship legislation, characterises citizenship of the USSR qualitatively and distinguishes Soviet legislation in principle from that of a number of capitalist countries, which impose limitations on the rights of individuals in direct dependence on how and when they were naturalised.

To sum up, citizens' fundamental rights and duties are the main legal effect of having Soviet citizenship, determining a person's legal status within the country.

On the strength of what has been said, the following definition of Soviet citizenship can be formulated:

*Soviet citizenship is a specific, stable and territorially unlimited legal bond between person and state, determining his legal status and enabling him to take an active part in the economic, political and social affairs of socialist society.*

Contemporary bourgeois citizenship doctrines typically seek to identify the concepts of society and the people with the concept of the state itself, to represent the people and the state as something harmonious. The population, they write, is part of one social entity designated as the state. Accordingly, there exists a fairly common sociological definition of the state as a sum-total of three constituent elements, viz. population, territory, and authority.

Every doctrine of citizenship and allegiance necessarily leads to the comparison of the population (citizens or subjects and stateless persons) and the state. In bourgeois legal literature, citizenship is often described as a "person's membership of a state" or a "person's legal political bond with the state", irrespective of the social status of the person and the real role played by the bourgeois state in the life of society.[1]

One of the more common concepts of citizenship in bourgeois jurisprudence is that this notion is essentially

[1] See, for instance, J.C. Plano and M. Greenberg, *The American Political Dictionary*, N.Y., 1962. They define *citizen* as "an individual who is a native or naturalised member of a state, owes allegiance to that state, and is entitled to the protection and privileges of its laws" (p. 46).



expressed in the individual's sense of "loyalty" to his state. Examining relations between individual and state, A. N. Sinha, Indian specialist in constitutional law, singles out loyalty as the main "connecting thread". Defining the state as a social phenomenon and describing in this connection the main characteristics of citizenship, Sinha writes that the state "is a body of people bound together by a 'collective consciousness' and a 'will-to-live in a community'. This corporate sentiment of peculiar intensity, intimacy and dignity also involves an instinctive attachment to a homeland—a country. This is revealed in the feeling of loyalty or patriotism, a feeling which transcends the division of parties' policies and gathers around it a body of traditions and sentiments, the most enduring and precious of spiritual possessions. These are the people who compose the community, and who, in their associated capacity, have established or subjected themselves to the dominion or a government for the promotion of their general welfare and for the protection of their individual as well as collective rights.... The basis of a man's nationality is his membership of an independent political community. It is a continuing relationship between the sovereign state and the national."[1]

Also characteristic of the bourgeois interpretation of the concept of citizenship are attempts to compare and associate it with other social phenomena, not of a legal character. So, Sinha, noting that "*nationality*[2] is very often used as an ethnic and cultural term", writes: "Social possessions of mankind which in this sense go to make people a nationality are common racial stock, common culture, common language, religion, customs and traditions, common history, common economic interests and political associations, geographic unity or even common hopes and aspirations. Every one of these factors need not be present in order that a people become a nationality....

[1] A. N. Sinha, *Law of Citizenship and Aliens in India*, London, 1962, pp. 3-4.

[2] In bourgeois literature the term *nationality*, besides expressing the meanings of *citizenship* and *allegiance*, also denotes an *ethnic group*, a *people*. Here we come across a fact fairly common in Western literature, when a nation is described above all as some racial and cultural human community.

"We are concerned with nationality in its legal sense. A state which is a political organisation may not coincide with nationality in its ethnic or cultural sense."[1]

Thus, Sinha tries to go beyond the limits of the definition of citizenship as a political community and to find its foundations in the related, although a broader, domain of *nationality*.

P. Weis, a noted British expert on citizenship theory, defines citizenship as a "specific relationship between national and state of nationality, conferring mutual rights and duties on both".[2] He maintains that citizenship should be referred rather to the field in which the major role belongs not so much to legal regulation as to considerations of a political, social, economic, demographic and even sentimental nature. Both the interests of the state and those of the individual are involved, he writes; conflicts between them are inevitable.[3]

The concept of citizenship is often interpreted as a phenomenon invested simultaneously with different meanings. This mainly refers to the formal dogmatic interpretation of the legislative rules devoted to citizenship and allegiance. Such are, for instance, the theoretical constructions of the Dutch jurist H. F. van Panhuys. Van Panhuys regards nationality (citizenship) as having two aspects, viz. as nationality in the formal sense and as nationality in the material sense. He explains that nationality in the formal sense is the "membership of a state as a formal status". It is used to denote the quality of belonging to a particular state. By nationality in the material sense he means the substance of nationality, "connoting the body of rules of substantive law which attach significance to nationality in its formal sense".[4] Further on, however, van Panhuys remarks

[1] A. N. Sinha, *Op. cit.*, p. 7.

[2] P. Weis, *Nationality and Statelessness in International Law*, London, 1956, p. 60. It is worth noting how P. Weis understands citizenship in terms of international law. He defines it as the affiliation of persons designated as nationals to a definite state as its members. This affiliation creates certain rights and imposes duties on a given state with respect to other states.

[3] P. Weis, *Op. cit.*, p. 250.

[4] H. F. van Panhuys, *The Role of Nationality in International Law*, Leyden, 1959, p. 20.



that he uses the word nationality (citizenship) "exclusively in its politico-legal meaning" and it "must be taken to mean the quality of belonging to the people(s) of a sovereign state".[1]

We do not find in Western scholarly writings any sufficiently clear and conclusive interpretation of the social nature and legal significance of citizenship. Analysing the meaning of citizenship in national law, Clive Parry (Great Britain), for instance, sees nothing incongruous in its interpretation whether as a "convenient attachment" of population or as a "rough and ready 'connecting factor', akin to residence and domicile" or as "primarily a conception with an international function".[2]

In West Germany, a book by Alexander N. Makarov has come out in which he expresses the opinion—typical of bourgeois juridical literature on problems of citizenship—that a citizen's rights and duties generally should not be regarded as concepts related to the substance of citizenship. Citizenship in his interpretation is invested with an abstract character while some rights and duties, although formally dependent for their existence upon citizenship, do not, nevertheless, refer to its concept.[3]

Lastly, some Western jurists, who think that the concept of citizenship is wholly devoid of any specific content, generally consider it to be unnecessary from the legal standpoint. Hans Kelsen, for example, asserts that the "existence of a state is dependent upon the existence of individuals that are subject to its legal order, but not upon the existence of 'citizens'".[4]

The bourgeois concept of citizenship usually starts from the recognition of the close connection of citizenship with a person's definite legal status. By citizenship proper

[1] *Ibid.*, p. 38. It is well worth noting the remark that "nationality in its politico-legal sense must be distinguished from nationality in its ethnological-sociological meaning, although the two concepts are interrelated" (H. F. van Panhuys, *Op. cit.*, p. 38).

[2] C. Parry, *Nationality and Citizenship Laws of the Commonwealth and of the Republic of Ireland*, London, 1957, p. 8.

[3] See A. N. Makarov, *Allgemeine Lehren des Staatsangehörigkeitsrechts*, Stuttgart, 1962, S. 30-31.

[4] Hans Kelsen, *General Theory of Law and State*, Cambridge (Mass.), 1945, p. 241.

is often understood a person's legal status characterised by public legal capacity, which is not implied in allegiance. This now classic division into citizenship and allegiance has been given modern interpretation in literature and legislation.[1]

One must also consider the persisting diversity of the terms used to denote the state of being a citizen and a subject as in many capitalist countries separate categories of inhabitants are even now formally invested with drastically limited legal capacity.

The view is fairly common in bourgeois scholarly literature according to which allegiance is in a way a prerequisite of citizenship, i.e. every citizen, in that he owes allegiance to the state, is also a subject; apart from that, he additionally enjoys special rights such as none but a citizen may have.[2] The purpose of this artificial construction is to explain away and justify the formally existing legal inequality of people under the capitalist system.

In describing, however briefly, the state of contemporary legal views of Western jurists on the nature and social function of citizenship, one must mention by all means the attempts of some bourgeois scholars to examine the problem thoroughly, drawing on extensive material. Nevertheless, the fact that they ignore the socio-political nature of the state and its institutions cannot but decisively affect the main principles and conclusions they arrive at concerning the real content of the relationship between inhabitants and

[1] See J. C. Plano and M. Greenberg, *Op. cit.*, p. 49: "*National.* A person who owes allegiance to a country, though not a citizen thereof." *National* in this case means *subject.*

A noted American specialist in international law, Charles Hyde, writes: "Nationality [allegiance—*Ed.*] refers to the relationship between a State and an individual which is such that the former may with reason regard the latter as owing allegiance to itself" (Charles Cheney Hyde, *International Law Chiefly as Interpreted and Applied by the United States*, Boston, 1922, p. 610). Article 308 of the 1952 US Immigration and Naturalisation Act establishes the categories of persons who, while nationals by birth, are not US citizens.

[2] In the same book, Ch. Hyde writes: "...citizenship may be truly regarded as a source of American nationality; for the citizen of the United States is necessarily also a national of the United States. It is to be observed, however, that the United States claims as nationals numerous persons upon whom it has not conferred rights of citizenship" (*Op. cit.*, p. 611).



the state, described as citizenship. At best, they produce definitions which do not clash with the current legislative practice.

### 3. Soviet Citizenship as a State-Law Institution

Every legal institution is a system of legal rules regulating social relations of the same kind. Properly speaking, the subject of regulation itself (a definite area of social relations) is what determines the unification of these legal rules in a certain system, a legal institution.

As a state-law institution, citizenship is a sum-total of legal rules or norms regulating the relations between the state and the individual with respect to the recognition, acquisition and loss of Soviet citizenship.

Soviet citizenship is a state-law institution because its formative rules are set down in state-law (constitutional) acts, viz. the Constitution of the USSR, Constitutions of the Union republics, the Citizenship of the USSR Act of 1978, decrees of the Presidium of the USSR Supreme Soviet, decrees of the Presidiums of the Supreme Soviets of the Union republics, and some agreements between the Soviet Union and other countries.

State-law relations between persons and the state take shape in the process of the regulation of relations concerned with affiliation to Soviet citizenship. Their special legal content consists in the fact that as they express different law-regulated relations between a person and the state with regard to citizenship, these relations furnish legal grounds for the acquisition, change or cessation of citizenship.

Relations with regard to citizenship regulated by the rules of state law emerge in the process of the exercise of state authority. It is for this reason that they are state-law relations.[1] Attribution of citizenship rules to Soviet state law springs above all from the nature of the social relations regulated by them.

Since a rule of law is inseparably linked with the re-

[1] State-law relations in the Soviet socialist state are social relations fixed and regulated by the rules of Soviet state law. They constitute the foundation of the working people's power and arise in the process of exercise by the Soviet state of that power.

lationship it is to regulate, it is impossible to conceive the nature of a rule without disclosing the character of the legal relations stemming from it.

Legal relations with regard to citizenship have a number of distinctive features.

The first of them is that one of the subjects of these relations is invariably the state; only an individual can be the other subject. Whenever the rules of citizenship law extend to a certain group of persons, these can be realised only if each person separately enters into relations with the Soviet state with regard to his citizenship (whether bearing directly on citizenship or on the necessary formalities, papers, etc.). Apart from that, relations concerned with citizenship may be entered into not only by citizens of the USSR, but also by aliens and stateless persons.

The second distinctive feature is that minors may be subjects of law as regards legal relations of citizenship. The 1938 Law on Citizenship of the USSR laid down the conditions and procedure of the recognition of Soviet citizenship of children whose parents changed their citizenship. When parents changed their citizenship through either transfer to or withdrawal from Soviet citizenship, the citizenship of their children under fourteen years of age changed accordingly. Change of citizenship of children of fourteen to eighteen years of age could follow in this case only with the consent of the children themselves. It was confirmed thereby that under the circumstances referred to a person became a legal subject starting from the age of fourteen. In all other cases, change of citizenship for minors under eighteen could follow only in the normal way.

The third distinctive feature of legal relations with regard to citizenship is that they are of short duration. So, the birth of a child in a family of Soviet citizens gives rise to a relationship involving the child's recognition as a Soviet citizen. This is not to say that the recognition of the child as a Soviet citizen follows automatically, because, as a matter of fact, a person from birth enters into a relation with the state so as to be recognised as a Soviet citizen. In this legal relation, the child is lawfully represented by its parents who are Soviet citizens. The relation emerging with regard to a person's recognition as a Soviet citizen terminates as soon as it is officially registered.



Sometimes the relation with regard to the recognition of a person as a Soviet citizen may terminate upon a legal condition being satisfied. For instance, under the Decree of the Presidium of the USSR Supreme Soviet, issued on October 19, 1946, Armenians returning from abroad to their homeland, Soviet Armenia, were considered to be Soviet citizens from the moment of their arrival in the Soviet Union.[1]

The fourth distinctive feature of the legal relation with regard to citizenship is that its emergence depends on a person's behaving in a certain way. In cases of admission to and withdrawal from citizenship relations emerge only provided that there is a specifically expressed and duly filed declaration of intention by the person concerned.

An alien or a stateless person wishing to acquire Soviet citizenship files a petition with the Presidium of the Supreme Soviet of the USSR or the Presidium of the Supreme Soviet of the Union republic on whose territory he resides. Withdrawal from Soviet citizenship is effected upon permission being granted by the Presidium of the Supreme Soviet of the USSR also if a petition has been filed by the Soviet citizen concerned.

The aforementioned distinctive features are fully reflected in the legal personality of the individuals involved in the legal relation with regard to citizenship. This, as well as the fact that Soviet citizenship is requisite to the possession of the legal status of Soviet citizen, explains why some Soviet writers refer Soviet citizenship rules to citizens' subjective rights. Soviet jurists are unanimous on this point, although their explanations of the nature of citizenship differ.

Prof. S. M. Ravin, for example, considers relations having to do with the principles of Soviet citizenship to be one of the specific instances of legal relations lying within the area of the fundamental rights and duties of Soviet citizens.[2]

More definite in this respect is the view of Prof. L. D. Voe-

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[1] *Vedomosti Verkhovnogo Sovieta SSSR* (Gazette of the Supreme Soviet of the USSR), No. 39, 1946.

[2] See S. M. Ravin, "The Main Distinctive Features of Soviet State Law", *Pravovedenie*, Series X, No. 1, 1961, p. 14.

vodin, who holds that the institution of Soviet citizenship is a part of the legal status of the individual. He bases this conclusion on the fact that the inception or termination of legal relations between the Soviet state and individual persons, regulated by the citizenship laws, entails changes in the legal status of the individual in Soviet society.[1]

L. D. Voevodin's suggestion that the institution of Soviet citizenship be regarded as an element of a citizen's legal status was supported by V. D. Popkov.[2]

The inference drawn by L. D. Voevodin does not seem to us conclusive, the more so as it is not sustained by sufficiently weighty arguments. Indeed, the above-quoted argument proves merely that citizenship is a necessary legal prerequisite of a person's definite legal status.

Prof. N. P. Farberov expresses a view similar to Voevodin's, when he writes about the intimate connection between the rules determining citizenship and those establishing the rights and duties.[3] Indeed, there is a connection between the rules regulating citizenship, and the subjective rights and duties that comprise the legal status of a Soviet citizen. But the connection between them springs from citizenship itself as the expression of a legal bond of a special kind existing between person and state. And whereas the purpose of the citizenship rules is to establish, change or dissolve this legal bond, the rules of law setting down the subjective rights and duties of Soviet citizens may be applied to them only by reason of this legal bond as the main legal consequence thereof.

Some jurists place among the sources determining citizens' legal status either the whole of citizenship law or some of its rules.[4] This was opposed by S. I. Rusinova. In her view,

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[1] L. D. Voevodin, "The Content of the Legal Status of the Individual in the Science of Soviet State Law", *Sovietskoye gosudarstvo i pravo* (Soviet State and Law), No. 2, 1965, p. 45.

[2] V. D. Popkov, "The Soviet Citizen: Legal Status and Responsibility", *Vestnik Moskovskogo Universiteta* (Journal of Moscow University), "Law", Series XII, No. 1, 1968, p. 9.

[3] N. P. Farberov, "Apropos of the Concept of State Organisation", *Pravovedeniye*, Series X, No. 1, 1963, p. 113.

[4] The Bulgarian specialists in state law B. Spasov and Ya. Radev, for example, write that, "in effect, the socialist legal status of Bulgarian citizens has received integral fundamental regulation in the Constitution and legislative acts issued in accordance with it, such as the Labour Code, pension laws, higher education laws, the Edict on Public Education, Bulgarian Citizenship Law, election laws, and so on. Some of them, especially election laws, are sources of state law, regulating citizens' political right to elect and be elected to representative bodies in the country" (*15 godini narodnodemokratichna derzhava i pravo, 9.IX.1944-9.IX.1959* [Fifteen Years of the People's Democratic State and Law, September 9, 1944-September 9, 1959], Sofia, 1959, p. 85).



"citizenship as a constitutional institution consolidates the objective factor of a person's affiliation to a state. To nearly the entire population of the Soviet Union this is the situation that objectively exists and requires no subjective declaration of will. Of course it may occur to individual persons to change citizenship and they will implement their subjective rights in changing it. But to all the inhabitants of the country, with extremely few exceptions, citizenship is merely an objective factor; anyone born of Soviet parents is considered to be a Soviet citizen."[1]

S. I. Rusinova considers it inexpedient to group citizenship rules with those regulating the subjective rights of Soviet citizens. We agree with her that one of the main functions of citizenship laws is to enhance the objective fact that the great bulk of the country's population are Soviet citizens. But while she has good reasons to regard citizenship as most essential to the exercise of rights, S. I. Rusinova, in examining the subjective character even of separate citizenship rules, does not, in fact, divide the subjective rights from the subjective powers of one of the subjects of the legal relation respecting citizenship. For example, she sometimes speaks about citizens' subjective rights which they realise in the process of changing their citizenship.[2] Indeed, the change of citizenship does not imply the exercise of any subjective right per se belonging to citizens, but only the emergence of specific subjective powers enjoyed by a person in the legal relation with the state respecting change of citizenship.

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[1] S. I. Rusinova, "On the State Organisation in the System of Soviet State Law", *Sovietskoye gosudarstvo i pravo*, No. 9, 1962, pp. 63-64.

[2] Subjective rights differ from subjective powers above all in that the former are of a universal and lasting nature while the latter appear and disappear merely in connection with a specific legal relation.

Some authors regard citizenship, if not as the legal status of a person or a legal relation, then at least as a legal relationship which by itself is a definite totality of the mutual rights and duties of person and state.

In tackling the question of the subjective character of citizenship rules, the point of departure, in our view, should be this. Citizenship as a definite legal relationship between person and state is merely an objective fact to a person. The Soviet state alone has the power to decide whether or not one who is a Soviet citizen may change his citizenship. It is its indelible sovereign right. This is why rules on citizenship do not fix any subjective rights, although on the basis of these rules and in the process of their realisation there certainly emerge powers for the person as the subject of a specific legal relation respecting citizenship.[1]

Of course a Soviet citizen can enter into relations with his state concerning a change of citizenship, sending an application to that effect to the Presidium of the Supreme Soviet of the USSR. Nevertheless, in the legal relationship that emerges, the subject of this relation, a Soviet citizen, has the power merely to apply for withdrawal from Soviet citizenship. He has no right to demand the implementation of his subjective right to change citizenship.

The relations regulated by citizenship rules have yet another distinctive feature. In some cases they are subject to regulation not only by the rules of state law, but by the rules of international law as well. So, for instance, relations connected with the acquisition of Soviet citizenship by a person may follow from the operation of the Law on Soviet Citizenship or from a bilateral agreement, such as, for example, the Agreement concluded by the Government of the USSR and the Provisional Government of National Unity of the Republic of Poland on July 6, 1945, under which persons of Russian, Ukrainian, Byelorussian, Ruthenian and Lithuanian nationality residing on the territory of Poland could withdraw from Polish citizenship and acquire Soviet citizenship upon arrival in Soviet territory.

The fact that rules of state and international law in some cases regulate similar relations, so that owing to the operation of these different rules the same results follow for a person who acquires or loses Soviet citizenship—this fact is no reason to regard these relations as identical. Simultaneously the relations between state and international law in the field of citizenship must not be reduced merely to the restrictions presumably imposed by international law on the state's freedom to regulate its citizenship at its own discretion.

No doubt, an international treaty confers on a state definite obligations, but this does not affect in the least the state's sovereign right to determine and regulate its citizenship.

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[1] An attempt to see citizens' subjective rights in citizenship rules has as its logical result the recognition of a "right to citizenship" which no sovereign state can accept. As is known, this idea has found expression in the Universal Declaration of Human Rights approved by the UN General Assembly on December 10, 1948. The Declaration, which is of great significance from the standpoint of confirming democratic principles in international law, contains, nevertheless, the following provision: (1) "Everyone has the right to a nationality. (2) No one shall be arbitrarily deprived of his nationality nor denied he right to change his nationality."

## Chapter 2

### CITIZENSHIP AND STATE SOVEREIGNTY

Citizenship as a concept of state law is most immediately related to state sovereignty from which it derives both its content and form. It is a major legal means whereby state sovereignty is entrenched and implemented as well as expressed. These legal qualities of Soviet citizenship may with good reason be considered to be one of its main principles.

Sovereignty is a totality of integral, immanent qualities of state authority, viz. supremacy within the country and independence in foreign relations. Sovereignty is expressed through the activities of the state and its law-making, executive, administrative and judicial bodies, being more specifically embodied in the competence—i.e. the sum of legal powers—of the state and its agencies, in sovereign powers above all.

There is no equating sovereignty with state authority per se, just as there is no equating the form and content of a thing. However, the form (sovereignty as an attribute of state authority) and the content (state authority) are interrelated.

The whole system of legal relations, the general law and order in a state are determined by sovereign state authority. The latter is also the source of legal capacity for the bodies of the state, officials, and private citizens. Therein lies one of the principal sovereign qualities of state authority, viz. its supremacy.

Sovereignty implies, in the first place, the principle of the supremacy of state authority over all persons residing in a country.



As it establishes general law and order in society, the state authority also determines the legal status of citizens. All inhabitants maintain a specific legal relationship with the state, whereby each individual is invested with definite legal capacity while the state authority exerts constant and stable influence on all legal relations of citizens.

The sovereign state authority exercises full jurisdiction over all who reside within the boundaries of the state, whereby it establishes between itself and the inhabitants that specific legal relationship whose content forms the notion of citizenship. Aliens and stateless persons, too, are subject to the sovereign power of the state of their residence. However, the legal bond established in this case between them and the state of their residence is specific and usually differs materially from the legal relationship which forms the content of citizenship proper.

State authority can function only given permanent and stable jurisdiction over citizens or subjects. By reason of this alone, the population of a state—its citizens or subjects, as a rule—is a natural prerequisite of the exercise of state authority. For the same reason, citizenship is one of the most essential attributes of the state itself.

As an attribute of state authority, supremacy is expressed in the establishment of general law and order in society, in the legal capacity of state bodies and social organisations, and in the vesting of rights and duties in officials and private citizens. The determinative position of state authority with respect to all relations of power is most clearly embodied in supremacy in which such attributes of state authority as unity, sovereignty, limitlessness and independence also find expression. Only when it has unlimited power can sovereign state authority pervade all relations in society, and thus be all-inclusive.

The state organisation of society is possible only when the population is divided on a territorial basis. The territorial pattern of a state ensures contact between the population and both the central and local government machinery. It facilitates the direction of production activities and furnishes the foundation on which rests the structure of the social organisations operating within the limits of the territorial units of a state.

The sovereign characteristics of state authority express themselves essentially in territorial supremacy and citizenship.

By territorial supremacy is meant the power of the state to exercise complete and exclusive authority within the limits of its territory. Territorial supremacy is established in domestic legislation and rules of international law. Accordingly, the problem of territorial supremacy is studied both in state and international law.

Since territorial supremacy is the legal basis on which a wide range of state-law and international-law relations regarding state territory are established and regulated, it is necessary to define the notion of *state or national territory*.

In Soviet legal doctrine, state territory is viewed as a part of the earth including land with its subsoil, waters and the air space over the land and waters, which belongs to a given state and is under its exclusive jurisdiction.

Territory proper is the material basis of the life of society organised as a state and is an objective condition of the existence of every state, irrespective of its social and political organisation. For all that a state is unthinkable without territory, it is characterised not by territory as a part of physical nature, but by men's social relations obtaining in a given territory and regulated and protected by the state as the political organisation of the ruling class.

The state organisation of society presupposes a certain interdependence between state authority and the population organised on a territorial basis. In turn, this relationship is to a certain extent responsible for the main socio-legal function of the territory of a state, namely, to be the spatial limit to which sovereign state authority extends.[1]

The area of a state comprises the land lying within the national frontiers, including isolated parts of the territory such as islands and enclaves. The land areas within the frontiers of the Soviet Union include the continental areas and islands lying within the Polar sector of the Soviet Union in the Arctic.

[1] There is no contradiction between this and the fact that the territory of a state may include unpopulated areas. For instance, incorporated in the territory of the Soviet Union are all mainland areas and islands, both already discovered and likely to be discovered in future, in the Arctic sector.



Included in the state territory of the USSR is also the water space which comprises the inland waters situated within the frontiers of the USSR (the national waters) and the territorial waters (sometimes called the territorial sea).

The inland waters of the USSR comprise all the rivers, channels and lakes situated within the frontiers of the USSR and the seas, both those wholly surrounded by the national territory (e.g. the Aral Sea) and those connected by a sound with another sea (e.g. the Sea of Azov) or with an ocean (e.g. the White Sea), whose shores are part of the territory of the USSR. Further, the inland waters comprise gulfs and bays whose shores belong to the Soviet state, as well as the waters of the gulfs, bays, inlets, lagoons and seas historically belonging to the USSR. The waters of sea ports also belong to the inland waters. The territorial sea is the sea belt immediately adjacent to the shores of the USSR, to which the state sovereignty of the USSR fully extends. The Soviet territorial waters are sea waters (the territorial sea), 12 nautical miles in width, measured from the line of low tide both on the mainland and round off-shore islands or from the line of the external limit of the inland sea waters of the USSR. The external limit of the territorial waters is the state boundary of the USSR at sea.

Unlike inland waters, the legal regime of territorial waters allows the passage of vessels of all countries, both coastal and non-coastal. The rules of foreign vessels' passage over territorial waters are written down in the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone. Passage of foreign vessels over the territorial waters of the Soviet Union is regulated at present by the Rules on the Protection of the State Frontier of the USSR.[1]

The air-space boundary between the USSR and other states is a vertical surface passing along the line which determines the limits of the territory and water space of the Soviet Union. Under Art. 1 of the Air Code of the USSR, "complete and exclusive sovereignty over the air space of the USSR resides in the USSR".[2]

[1] *Vedomosti Verkhovnogo Sovieta SSSR*, No. 34, 1960, pp. 747-756.
[2] *Ibid.*, No. 5, 1961, p. 538.

The powers of the state connected with the exercise of territorial supremacy furnish the legal basis on which the political, state-law and international-law relations regarding national territory are established and maintained. Territory as such naturally cannot enter into a legal relation with a state. A legal relation is possible only *concerning* the territory of a state.

The legal nature of state territory is revealed in corresponding sovereign instruments of a state as well as in its relations with other states concerning territory.

The limits of a state's sovereignty are demarcated by its frontiers. A state establishes and alters the regime on its borders and in border and other special areas as well as the regime and conditions of navigation and the use of the national waters, and protects and defends the state territory. The state also determines the politico-administrative organisation of the territory and divides it into administrative-territorial units. This serves to disperse the population over the territory and furnishes the foundation for the activities of bodies of state authority and administration carried on a territorial basis.

The subjects of state-law relations regarding territory are the state on the one side, and the inhabitants territorially organised in definite administrative-political units on the other.

Territorial supremacy may be described as a function inherent in state authority and which stems from the fact that the very existence and operation of state authority require that there be territorially definite objects of dominion.

Simple exercise of state authority within the limits of some territory does not by itself make this territory belong to a given state.

The notion of territorial supremacy is not equivalent to the notion of jurisdiction. Exercise of state authority involves the activities of the legislative, executive, judicial and other bodies of a state. On its own territory, a state may apply all means of enforcement, consistent with its laws, both to its own citizens and to aliens or stateless persons, unless special agreements exist with regard to the latter two. At the same time, no state may apply its means of enforcement on the territory of a foreign state



even to its own citizens. It may not, for instance, arrest one of its citizens on the territory of another state.[1]

It is determined by the nature of territorial supremacy that the territory of a state is not only the space within the limits of which the sovereign existence of state authority is ensured, but also the object of sovereign rule. Thereby a state is, as it were, the owner of its territory.

In the federal Soviet state, the territorial supremacy of the Soviet Union extends to the entire territory of the federal state. Article 75 of the Soviet Constitution states that the "territory of the Union of Soviet Socialist Republics is a single entity and comprises the territories of the Union Republics. The sovereignty of the USSR extends throughout its territory". And the territorial supremacy of each republic extends to its own territory. There is unity of state authority in the framework of the federal state on the one hand, and one subject of the right of ownership of all objects comprised in the territory of the federal state, on the other. The united subject of ownership is the Soviet Union. The republics which form the Soviet Union also are owners of the single property fund. The fund is, however, indivisible, as socialist state property is the property of the whole people.

The USSR and its constituent republics exercise territorial supremacy jointly.

The constitutional principle proclaiming and guaranteeing the right of a Union republic to exercise territorial supremacy is written down in Art. 78 of the Constitution of the USSR, and corresponding articles of the Constitutions of Union republics, which state that the territory of a Union republic may not be altered without its consent. Boundaries between Union republics may be changed by their mutual consent subject to approval by the Union of Soviet Socialist Republics.

Following from the principle of territorial supremacy is one of the major constitutional powers of the USSR and Union republics in the field of the administrative-political organisation of their territory. The power of approval of the formation of new Autonomous republics and regions

[1] Exceptions from this rule are usually stipulated by agreements on the legal status of armed forces disposed on foreign territory.

within Union republics is vested in the Soviet Union (Art. 73 [1] of the Constitution of the USSR) because the questions referred to have an immediate bearing on the implementation of the nationalities policy and are acts of great political significance. Apart from that, the fact that these powers are vested in the Soviet Union is a reliable guarantee of the territorial integrity of nation-state formations.

Chapters on state organisation in the Constitutions of Union republics establish their powers concerning their territorial division, such as the power to approve the boundaries and division into districts of Autonomous Soviet Socialist republics and regions, establish the territorial and regional division of republics and, in the case of republics not divided into regions, to delimit districts, enumerating cities and towns subordinated to the republican government.

From the content of the notion of state supremacy follows that any encroachment on the territorial integrity of a state is an encroachment on its sovereign power as well, and is therefore a gross violation of state sovereignty. Any attempt to enforce within the boundaries of a state the authority of another state should be regarded in the same light.[1]

The UN Charter (Art. 2, Point 4) forbids the threat or use of force against the territorial integrity or political independence of any state.

Affiliation to Soviet citizenship is most immediately linked with state sovereignty also for the reason that in

[1] Some West European jurists seek to justify the nakedly revanchist claim that the Germans residing in the German Democratic Republic, Poland and other socialist countries allegedly retain "former German citizenship". They cite the Fundamental Law of the FRG of May 23, 1949, Art. 116 (I) of which arbitrarily expands the meaning of the term "German citizen".

Such attempts have no scientific grounds and run counter to the fundamental provisions of the Treaty on the Bases of Relations between the German Democratic Republic and the Federal Republic of Germany, Art. 6 of which states that the parties proceed from the principle that "the sovereign power of either state shall be confined to its respective territory. They shall respect the independence and autonomy of either state in its internal and external affairs".

The Government of the GDR, in its Note of February 1975, justly took the attempt of the Government of the FRG to hinder the GDR from concluding consular agreements on citizenship with Austria and other countries as a denial of international law and a return to the times of decayed arbitrary doctrines.



the Soviet state of the whole people in which the people is the sovereign, affiliation to citizenship implies involvement in the exercise of state authority and sovereignty.

Thus, the relation between citizenship and state sovereignty has two main aspects.

On the one hand, in enforcing law and order in the country in general, the government defines also the legal status of its citizens. In this case, the government exercises its supremacy through establishing citizenship in the country.

On the other hand, affiliation to citizenship of a socialist state implies that all citizens participate in government, i.e. in the exercise of state sovereignty.

State sovereignty is at the basis of the constitutional principles of the organisation and operation of the Soviet federal state. The federal form of the Soviet state has been reflected in Soviet citizenship too. Along with citizenship of the USSR, there is also citizenship of Union republics there. A Soviet citizen is simultaneously a citizen of the Soviet Union and of the Union republic in which he resides. In this way, Soviet citizenship has assimilated the federative pattern of the Soviet state.

Now we can formulate the following basic propositions of Soviet legal doctrine on the relation between citizenship and state sovereignty:

(1) citizenship of its own is an essential characteristic of a state;

(2) regulation of matters pertaining to citizenship is a state's most sovereign power;

(3) a citizen's position in international-law intercourse depends on the exercise of state sovereignty.

The Soviet Union is an integral, federal, multinational state formed on the principle of socialist federalism as a result of the free self-determination of nations and the voluntary association of equal Soviet Socialist Republics.

The USSR, which embodies the constitutional unity of the Soviet people, consists of 15 Union republics, each of which is a sovereign Soviet socialist state. A Union republic, as a sovereign state, has its own citizenship, and also possesses certain powers in dealing with matters of Soviet citizenship. Legislation on Soviet citizenship is also founded on the federal principle of the organisation of the Soviet federal state.

Clause 2 of the 1978 Citizenship Act is concerned in particular with the legislation of the USSR and Union Republics on Soviet citizenship. It states:

"The legislation of the USSR on Soviet citizenship consists of this Act defining the grounds and procedure for acquiring and losing Soviet citizenship, in accordance with Article 33 of the Constitution of the USSR, and other statutes of the USSR.

"Matters of Soviet citizenship placed in the competence of a Union Republic by the Constitution of the USSR, the Constitution of the Republic, and this Act, shall be decided by legislation of the Union Republic."

It must be noted that the simultaneous existence of federal and republican citizenship within one federal state cannot be founded on the legal distinctions that are associated for a person with the Union and republican laws.

Of course, being subject simultaneously to the jurisdiction of the Soviet Union and the Union republic in which he resides has a certain legal effect on a Soviet citizen, telling in a definite way on his legal status. For instance, federal citizenship confers on citizens additional rights compared with those they enjoy merely as citizens of a Union republic. As citizens of the USSR they may elect and be elected to the Supreme Soviet of the USSR, take part in a country-wide referendum, be subject to all Union laws and other legal acts, and so on.

The fact that a Soviet citizen is simultaneously affiliated to citizenship of a republic certainly has legal effect also with respect to matters regulated by rules of private international law. For example, under Art. 32 of the Fundamentals of Legislation of the USSR and the Union Republics on Marriage and the Family, in respect of a marriage or other registrations at USSR embassies and consulates abroad, the laws of the Union republic of which the parties are citizens shall apply. Should the parties be citizens of different Union republics, or where it has not been established what republic they are citizens of, the laws of one of the Union republics, given consent between the partners, shall apply; should differences arise, the matter shall be decided by the official responsible for registration.

This, however, is not the only thing that is at the basis of the simultaneous existence of both federal and republican citizenship. There is not much difference, in fact, in the legal status of citizens in different Union republics. But this is no reason to deny each person residing in the territory of a Union republic (unless an alien or a stateless person) specific republican citizenship, e.g. of the Russian Federation, the Ukrainian SSR, the Byelorussian SSR, and so on.

At the basis of the existence of, and relation between, Soviet and republican citizenship is the state sovereignty of the Soviet Union and Union republics, as citizenship itself is a necessary form whereby this sovereignty is expressed and carried out.

Many Soviet students of the state regard citizenship as a legal guarantee of a state's sovereignty. The very notion of a guarantee designates the means such as are to ensure the integrity of a thing or event. In this instance, citizenship as a legal means of the expression and exercise of state sovereignty is to be also a guarantee of the sovereignty of a state.

In accordance with the basic principles of the organisation of the Soviet federal state, the sovereignty of the states (Union republics) of which it is comprised is inseparable from their competence. Competence is, of course, determined by sovereignty, but it, in its turn, exerts a decisive influence on the latter. We have here, as it were, a relation of two categories, viz. quantity (competence) and quality (sovereignty). Only after a definite quantitative level is reached and maintained does a certain quality appear and continue. With an essential change in quantity, the quality may be lost, i.e. transition to some other quality will occur.

Something similar may be observed also in the relation between competence and sovereignty. The sovereignty of a state may exist only given a definite scope of the state's powers, above all sovereign powers, which together form the competence of the state. With the loss of essential sovereign powers, including those related to citizenship, a state's sovereignty—its capacity for supremacy and independence—may also be lost.

As for the interdependence between the sovereignty and competence of the USSR and Union republics, it is not excluded that the competence of the USSR and Union republics may change within certain limits. This, however, cannot result in the loss or limitation of sovereignty.

When dealing with the powers of a state concerned with questions of citizenship, the problem of the relation between citizenship and state sovereignty acquires a new and independent aspect, viz. the capacity of citizenship to express and bring to bear state sovereignty, such as finds its embodiment in the right of a state to accept a person as its citizen, admit to, permit to withdraw from, and deprive a person of its citizenship. The state alone is entitled to establish, alter or end that specific legal bond between itself and a person which is citizenship proper.

Dual citizenship, i.e. a situation in which a person is affiliated to the citizenship of two states or more, contravenes the principle of sovereignty. Quite clearly, a state cannot, then, exercise full jurisdiction over such a person as the other state (or states) will equally regard him as a citizen and deal with him accordingly (e.g. conscripting him for military service). That, in its turn, conflicts with the interests of the state which also, with good reason, considers the same person to be one of its citizens. On the other hand, a person who has dual or plural citizenship must carry out the obligations and duties claimed by several states simultaneously.

The Soviet state does not accept dual citizenship. From the standpoint of Soviet law, a person who is recognised as a Soviet citizen will be regarded exclusively as a Soviet citizen, even though, by the laws of another state, he may be reckoned among the citizens of that state. Any steps taken by a citizen with the intention to withdraw from Soviet citizenship without proper permission injure the sovereignty of the Soviet state.

Citizenship as a legal institution can only exist at the will of a state, duly expressed and registered, and which finds legal embodiment in the exercise of the powers of certain bodies of the state authorised to handle matters of citizenship. Thus, besides having citizenship of its own, a Union republic, which is a sovereign state, enjoys the right of admission to its citizenship and thereby to the citizenship of the USSR. Only the Presidium of the USSR Supreme Soviet or the Presidium of the Supreme Soviet of a Union Republic is empowered to decide matters of the granting of Soviet citizenship. Matters connected with the restoration, relinquishment, or deprivation of citizenship



of the USSR are decided exclusively by the Presidium of the USSR Supreme Soviet (Clause 26 of the Citizenship of the USSR Act of 1978).

Perhaps this involves a contradiction? On the one hand, citizenship is closely connected with definite sovereign powers vested in a state while, on the other, we are faced with a certain limitation of such powers in the case of a sovereign state (a Union republic). If a Union republic has only limited powers (in that it is not entitled to permit withdrawal from citizenship or deprive anyone of Soviet citizenship), does it mean that the very existence of citizenship in it is merely nominal? No, it does not.

Soviet socialist federation implies uniform Soviet citizenship. The simultaneous existence of federal and republican citizenship is ensured by the exercise of the powers relating to citizenship which are vested in the USSR and Union republics.

Admission to Soviet citizenship is in the joint competence of the USSR and its Union republics. Deprivation of Soviet citizenship and permission for withdrawal from it are, however, in the competence of the USSR only. So is admission to Soviet citizenship of aliens residing abroad.

In looking at the relation between citizenship and state sovereignty, it is important to observe that state sovereignty both of the USSR as a whole and of each Union republic has found its legal confirmation not only in the Constitution of the USSR and Constitutions of Union republics, but also in the Citizenship of the USSR Act. The Law defines and clearly delimits the competence of the USSR and Union republics on questions relating to citizenship. Democratic centralism as well as the state sovereignty of the socialist federation and its subjects—these are the main factors determining the delimitation of powers in the Union of Soviet Socialist Republics.

One of the fundamental aspects of state sovereignty—independence with reference to citizenship—is expressed above all in the fact that every sovereign state regulates all matters pertaining to its citizenship on its own account, independently of any other authority whether inside or outside its borders.

Settling the question as to the relation between national and international law is of essential significance to the problem of citizenship.

Whereas national law serves to express and exert sovereignty mainly within the boundaries of a state, in the field of foreign relations sovereignty is exerted through the establishment of rules of international law by the states as well as through the activities of international agencies performing their functions in line with the effective rules of international law.

The specific character of the manifestation and embodiment of state sovereignty in international law is due to the fact that international intercourse takes place between sovereign states and the exercise of sovereignty by each state in such circumstances must inevitably take into account the sovereignty of other states and must therefore necessarily be in the form of agreements between states. These agreements deal with subjecting one's actions in a given area of relations to certain rules which, once an agreement has been concluded, become binding on the parties. The agreements result in rules of international law. These rules embody the sovereign will of the states parties to an international agreement and, in their turn, serve as legal means of the exercise of each state's authority in the international arena.

The principle of sovereignty imposes on a state the duty to be guided by and strictly observe both the generally accepted rules of international law and the agreements and treaties it is a party to. This, of course, does not entail any limitation of the sovereign rights of the given state.

At the same time, some Western writers allege that all state sovereignty is limited in principle by positive law (national and international), the general principles of law (including human rights) and also by the sovereignty of other states. An example of this is a book by the French jurist A. Goellher.[1]

Many writers seek to prove the inevitable limitation of state sovereignty citing the "freedom" of states from obligations under international law. Significant in this respect is the opinion of G. Schwarzenberger, a noted English specialist in international law, who says that each subject of international law is "free to limit as it sees fit the exercise of its own sovereignty in favour of another sovereign State or an international institution or to extinguish its own sovereignty in favour of another".[1]

[1] Alarar Goellher, *Les puissances moyennes et le droit international*, Neuchâtel, 1960, p. 48.



This statement follows entirely from Schwarzenberger's view on sovereignty as a legal abstraction and a negative notion, and is in line with his argument that under present-day conditions relations between the two world camps are based on power which rests on nuclear deterrence while the sovereignty of a state has been replaced by mutual dependence in the context of the two camps.

We do not share this opinion. International law essentially implies that the observance of the rules of law referred to is ensured by the state itself taking part in international intercourse without any infringement of the rights of other states. These rules are carried out by a state on a voluntary basis, no other state or international institution being entitled to take it upon itself to implement them with respect to either this or any other state.

The principle of state sovereignty in international law rests on non-interference in the internal affairs of other states. This rule is laid down in Point 7 of Art. 2 of the UN Charter, which states that nothing contained in the Charter shall authorise the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State or shall require the Members to submit such matters to settlement under the Charter.

Unlike Point 8 of Art. 15 of the Covenant of the League of Nations which referred to international law as the yardstick of a state's domestic jurisdiction, Point 7 of Art. 2 of the UN Charter recognises the states' sovereign right to determine their own competence, prohibiting intervention in matters "which are essentially within the domestic jurisdiction of any State".

It is not by chance that opponents of the principle of state sovereignty attack in particular this article of the UN Charter.

In examining the legal nature of the principle enunciated in Point 7 of Art. 2 of the UN Charter, M. S. Rajan, an Indian specialist in international law, arrives at conclu-

[1] Georg Schwarzenberger, *A Manual of International Law*, Vol. 1, London, 1960, p. 60.

sions contravening the theory and practice of international law and, in fact, spearheaded against state sovereignty. Sharing the opinion of many Western jurists on the priority of international over domestic law, Rajan maintains that the internal competence of states is determined by international law, although the UN Charter mentions nothing to that effect. Rajan holds that with the establishment of control over atomic energy there emerges international law "in which the concept of domestic jurisdiction of a state will be rendered practically meaningless".[1]

The principles of international law concerning friendly relations and co-operation among states in accordance with the Charter of the United Nations, including the principle of non-interference in the internal affairs of other states and the principle of sovereign equality of states in international law, were further specified and confirmed in Resolution 1815 (XVII) passed by the UN General Assembly on December 18, 1962.[2]

We cannot, of course, present here an exhaustive list of matters which make up the domestic competence of a state. Besides, the scope of competence is not permanent and varies depending on international developments and a state's international commitments. It must only be observed that a dispute or a situation which endangers world peace and security, affecting thereby the vital interests

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[1] M. S. Rajan, *United Nations and Domestic Jurisdiction*, London, 1961, p. 394.

[2] *UNO. Resolutions Adopted by the General Assembly at Its 17th Session, September 18-December 20, 1962*, New York, 1963. The Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and on the Protection of Their Independence and Sovereignty (DOC Res. [2131/XX]), adopted by the 20th Session of the General Assembly on the initiative of the Soviet Union, contains a detailed exposition of the nature and basis of the principle of non-interference. The draft Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations, proposed by Czechoslovakia at the 17th General Assembly Session, mentions among the major principles the principle of state sovereignty, territorial integrity, respect of the independence of states above all in deciding on their social, economic and constitutional system, the principle of the sovereign equality of nations, and so on.



of all nations, certainly ceases to be a domestic matter of this or that country and is to be submitted to international regulation.

This subject was examined by N. A. Ushakov, G. I. Morozov, A. P. Movchan, A. I. Botvin and other Soviet specialists in international law.[1]

Such matters as become the object of international agreements concluded by a state as well as of special conventions (e.g. the convention on the prevention and punishment of the crime of genocide, on the prohibition of trade in narcotics, etc.) no longer come under the domestic jurisdiction of a state. A state which is a member of such an agreement or convention and has assumed certain commitments is responsible in international law for their fulfilment. A state usually adopts domestic acts on such matters.[2]

The Czechoslovak jurist Jan Tomko writes that internal affairs remain so as long as the state wishes them to, i.e. until the state itself should think fit to assume a relevant commitment towards other states or international organisations and until it itself should define their framework. If thereafter the state fails to carry out or violates its commitments, it incurs responsibility because non-observance or violation of an international agreement no longer is an internal matter.[3]

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[1] N. A. Ushakov, *Suverenitet v sovremennom mezhdunarodnom prave* (Sovereignty in Contemporary International Law), Moscow, 1963; G. I. Morozov, *Organizatsiya Obyedinyonnykh Natsii* (The United Nations Organisation), Moscow, 1962, p. 174; A. P. Movchan, "Codification of Principles of Peaceful Coexistence in International Law", *Sovietsky yezhegodnik mezhdunarodnogo prava* (Soviet Yearbook of International Law), 1963, Moscow, 1965.

A. I. Botvin quite rightly remarks that matters concerned with the internal system, such as the socio-political and socio-economic systems, the state organisation, etc., occupy a special place among the relations of a wide range which fall within the domestic competence of a state. The matters referred to may by no means be subject to regulation by international law and constitute the field of exclusive domestic competence of every state. See A. I. Botvin, "The Principle of Non-Intervention in Modern International Law", *Pravovedenie* (Jurisprudence), No. 3, 1968, p. 120.

[2] N. A. Ushakov, *Op. cit.*, p. 151.

[3] Jan Tomko, *Vnutrennyaya kompetentsiya gosudarstv i OON* (Domestic Competence of States and the United Nations), Moscow, 1963, pp. 233-234 (translated into Russian from Slovak).

Domestic law and an international treaty are two main legal forms expressing the sovereignty of state power, the functions of the state, for which reason, if for no other, they are related and united and exert mutual influence upon each other.[1]

This is clear among other things from the fact that a state's international acts have to be carried out in accordance with and within the limits of the constitutional laws. For this reason, any violation of constitutional competence renders an international agreement illegal and therefore invalid. This, nevertheless, gives a state no reason to reject established rules of international law, those referring to treaties above all, as they contravene national law. To interpret this matter in any other way is to deny the legal force of international law.

In Soviet legal doctrine, an international agreement and domestic law are considered to be of equal legal force. Neither may have pre-eminence. Only proceeding from the principle that treaty and law have equal legal force and taking into account the dialectical relationship between treaty and law, can one see why in some instances treaties make some of their provisions dependent on domestic law while in other instances domestic law stipulates, regardless of the general rules of law, that provisions of an international treaty shall be applied on a national basis.

Reference rules designed to convert an international treaty or a part of it into rules of Soviet national law are to be found in Clause 29 of the Citizenship of the USSR Act, 1978 ("If an international treaty or agreement to which the USSR is a party has established rules other than those contained in this Act, the rules of the treaty shall prevail)" and also in the analogous Article 129 of the Fundamentals of Civil Legislation of the USSR and Union Republics and Article 64 of the Fundamentals of Civil Procedure of the

[1] I. P. Blishchenko points out a characteristic feature of this question, viz. that the influence of international law on the rule of law in a socialist state is rather of a technical juridical character—specifying or expanding—insofar as socialist law comprises all common democratic legal institutions capable of assimilation by domestic law (I. P. Blishchenko, "Relation between International and National Law", in a collection of articles on philosophy, history and law, IMO Publishers, Moscow, 1957, pp. 106-107 (in Russian).



USSR and Union Republics. The reference rules by no means imply any pre-eminence of international law over Soviet national law, as treaty provisions acquire the character and force of national law not by reason of their special qualities but solely on the basis of the national law of the USSR.

In looking at citizenship in international terms, Soviet legal doctrine proceeds from the principle that state sovereignty alone determines both the existence of citizenship and the means of its regulation.

In international law, citizenship may be regarded merely with reference to the activities of certain sovereign states. The individual cannot pretend to any significance in international legal intercourse without the determinative influence of the sovereignty of the state whose citizen he is. In this case the individual is directly and immediately connected with state sovereignty both as to his legal status and all his legal acts. No international body or agency is authorised to deal with citizenship matters as they are in the exclusive competence of the sovereign state.

An instance of this being ignored may be found in the drafts of the convention on the elimination of statelessness which were discussed in 1953 by the 5th Session of the UN International Law Commission. In starting from the fallacious idea of priority of international over national law, the authors of the drafts put the emphasis on setting up a special tribunal within the framework of the United Nations, empowered to deal with matters concerning citizenship of different persons.

When the convention was in its drafting stage, a Soviet and a Czechoslovak delegates — members of the Commission— spoke against the idea itself of such conventions and stressed that citizenship and statelessness were matters in the internal jurisdiction of sovereign states.

Matters concerned with admission to citizenship and other matters bearing on the regulation of citizenship essentially refer to a state's internal jurisdiction. In some cases, however, they acquire an international character, e.g. when states conclude an agreement on matters affecting some part of the population of the negotiating parties.

Matters concerning citizenship should be regarded in terms of international law also where there is collision

between the laws of different states, which happens fairly often. Whenever citizenship matters appear on an international plane, they are settled exactly through the exercise of national sovereignty, all precedents being usually set down in domestic law.

We do not share the opinion of M. Genovsky (Bulgaria) who holds that the relation, or the absence thereof, between individual and state (citizenship, statelessness, dual citizenship) are sufficient in themselves to make him a subject of international law. In M. Genovsky's view, the legal status of an individual has become of an international nature so that "on the strength of rules of international law there emerge subjective individual rights, to be claimed and exercised without mediation by one's country".[1]

Even if a person is employed by an international organisation, e.g. if he is on the staff of the United Nations, the state whose citizen he is retains all sovereign rights in his respect, including the right to diplomatic immunity.

This, of course, implies no denial of the right of a state to define and write down in international legal documents principles of the individual's legal status, the rights and freedoms referring to citizens of all countries. Nevertheless, this does not make the individual a subject of international law.

The duty of a state to observe the fundamental rights and freedoms ensues from the principle of respect of human rights proclaimed in Point 3 of Art. 1 of the UN Charter. This principle binds the states to ensure fundamental rights and freedoms to all persons in their territory and jurisdiction, ruling out all discrimination.

The legal character of the states' obligation to observe fundamental human rights and freedoms is borne out also by some international legal acts (see Art. 6 of the Declaration of the Rights and Duties of States, adopted by the 1st Session of the UN International Law Commission in 1949, the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations, adopted by the UN General Assembly in 1970, and so on).

[1] M. Genovsky, *Osnovi na mezhdunarodnoto pravo* (Fundamentals of International Law), Sofia, 1966, pp. 111, 112-114.



Fundamental human rights and freedoms are enumerated in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights.

Both the covenants on human rights and other international agreements in this field charge the states to effect internal measures including the enactment of laws relevant to carrying out the commitments made.

International rules on human rights are intended to be carried out through the domestic laws of individual states taking into consideration their socio-economic systems. That is why the covenants on human rights do not confer rights on individuals but establish mutual obligations of states in granting such rights to individuals. G.I. Tunkin, a well-known Soviet writer on world affairs, writes that "international law has invaded the area which has always been considered to be in the domestic jurisdiction of states and in which—and this is very important—specific features of different social systems are most strongly manifest. Nevertheless, this 'invasion' of the regulative influence of international law into the field of human rights means neither that human rights are regulated by international law directly nor that they have ceased to be principally the internal affair of the state."[1]

Solution of questions as to the legal status of the individual refers to the domestic jurisdiction of the state, which, proceeding from the commonly accepted principles and rules of international law and commitments under concrete international agreements, determines the scope, content, and safeguards of individual rights. For this reason, the scope of individual rights and freedoms is different in different countries, being determined in the long run by the nature of a state's socio-economic and political system.

Some individual rights and freedoms enunciated in acts of international law may be lawfully limited. For example, the International Covenant on Civil and Political Rights stipulates certain restrictions needed in a democratic society

[1] G. I. Tunkin, *Teoriya mezhdunarodnogo prava* (Theory of International Law), Moscow, 1970, p. 93.

to ensure public or state security, public order, health and morality as well as to protect other persons' rights and freedoms (Art. 12 and Art. 19). The Universal Declaration of Human Rights also states that "in the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society" (Art. 29).

Both the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights point out that the limitations of individual rights and freedoms must be determined by law. Consequently, determining the extent of such limitations refers to the domestic competence of a state, it being clear (1) that limitations should be imposed so far as not to call in doubt the fundamental social worth of the rights and freedoms, (2) that the enforcement of the limitations should not lead to discrimination for any reasons whatsoever, and (3) that the limitations should not clash with the state's commitments under international agreements.

The Conference on Security and Co-operation in Europe (Helsinki, 1975) reaffirmed the crucial principle of international law that the handling of matters concerning the regulation of individual rights and liberties refers wholly to the domestic competence of states.

International co-operation of states in the field of human rights should be directed above all at fighting mass-scale gross violations of rights and freedoms which occur as a result of aggression, fascism, colonialism, genocide, apartheid and racism. Under international law, violations of human rights perpetrated on a mass scale and endangering peace and international security or being a blatant denial of the purposes and principles of the UN Charter are not the exclusive business of the state pursuing such policies. The United Nations is entitled to take a whole range of measures to curb such acts which are wrongful from the international standpoint. Fighting international crime will make for closer co-operation among states in promoting respect for, and exercise of, human rights.

The further improvement of forms and methods of international co-operation in the field of human rights largely depends on the extension and materialisation of international detente and greater mutual confidence between countries with different social systems, which must result from it.



Safeguarding human rights is and will be essentially an internal matter. This justifies the conclusion that the main field of the struggle for human rights is the internal state system and especially the socio-economic system of a state. As to the international protection of human rights carried out mainly by means of international law, it is an ancillary, albeit an important, means of safeguarding these rights.

Bourgeois writers on law, especially international law, insist that individuals have international legal personality. It is easy to see that this idea springs from either extreme belittlement of the importance of state sovereignty as such or its round denial.

The idea of the individual's legal personality is not at all new. It was formulated in the 19th century by Heinrich Heffter, a German scholar. Today this idea has gained currency in Western jurisprudence.

To substantiate their claim to the recognition of individuals' international legal personality, Western jurists often cite rules of international law on the order of exchange of inhabitants between states, the treatment of cases of statelessness, the institution of asylum, and so on.

This, however, has to do with the international legal capacity of states which assume certain obligations towards the individuals to whom their sovereignty extends, not with turning individuals into subjects of international law. This refers to international rules which apply during a person's stay abroad, rules which pertain to option, transfer or exchange of population in connection with territorial changes as well as exchange of prisoners during and after a war, and so on.

References to the liability of individuals guilty of offences at international law, such as genocide, slave trade, trade in narcotics, and so on, fail to convince as the international aspect of such cases is limited to the inter-governmental unification of measures for controlling these species of crime. An individual does not become a subject of international law for that reason.

One should view in the same light the legal nature of the Universal Declaration of Human Rights and other international documents which derive their binding force solely from the fact of their approval by certain states which are, accordingly, to translate the aforementioned circumstances into practice strictly in keeping with the principle of state sovereignty. This naturally detracts nothing from the great political significance of the democratic principles proclaimed by the Universal Declaration of Human Rights and by other similar documents.

Many international acts proclaim universally recognised moral principles. Point 8 of the Declaration on the Occasion of the 25th Anniversary of the United Nations reads that the international conventions and declarations concluded under its auspices give expression to the moral conscience of mankind and represent humanitarian standards for all members of the international community.

The moral principles of mankind condemn violations of human rights, the dignity and worth of the human individual and encourage the states to develop respect for rights and fundamental freedoms for everyone.

Subjects of international law are states first and foremost. But from this it does not follow that individuals have no rights in the international field. A state as a member of international intercourse is bound in principle to protect its citizens' interests by all available lawful means. Consequently, whenever necessary, individuals may turn for protection to the state whose citizens they are.

The British jurist H. Lauterpacht maintains that the phrase "fundamental human rights" used in the UN Charter implies recognition of the international status of the individual tantamount to his recognition as a subject of international law. For proof, he also cites the Charter of the International Military Tribunal which defined the notion of crimes against humanity.[1]

A similar view was expressed by H. Kelsen[2] and Ch. Rousseau.[3]

[1] See H. Lauterpacht, *International Law and Human Rights*, London, 1950, pp. 45-47.
[2] Hans Kelsen, *The Communist Theory of Law*, London, 1955, p. 177.
[3] Ch. Rousseau, *Droit international public*, Paris, 1974, pp. 216, 221.



The doctrine which recognises individuals as subjects of international law is based on the idea of the evolution of international law into world state law whose subjects are both states and individuals.

Some bourgeois scholars cite the 1950 European Convention of Human Rights and Fundamental Freedoms as evidence that the idea of individuals being subjects of international law has already been carried out.

Thus, A. Robertson, a British jurist, argues that the European Convention of Human Rights and Fundamental Freedoms shows that a person not only enjoys rights on the international scene, but may file complaints with international bodies against his own government. A. Robertson regards the Court of Human Rights alongside the European Economic Community and the Council of Europe as the prospective "third partner in the institutions of Greater Europe".[1]

Werner Kägi (Switzerland), on his part, shares the opinion of those bourgeois jurists who try very hard to belittle the significance of the principle of state sovereignty, citing the international protection of human rights. He considers the exclusive right of the state to complain to international juridical bodies to be old international law as in his view this provision has been rendered meaningless by the conventions recognising the right of the individual to lodge complaints directly with international bodies. To Werner Kägi, the principal merit of the European Convention of Human Rights is that it does not see human rights as a national matter. Furthermore, he advocates the establishment of a special international court on human rights and the creation of the office of UN Human Rights Commissioner.[2]

The history of such presumably supranational bodies as the European Commission of Human Rights, the European Court on Human Rights and Fundamental Freedoms and others set up under the Convention referred to demonstrates, however, their sheer impotence.

Although international law in principle denies limited jurisdiction of a state with respect to its citizens, it never-

[1] A. Robertson, *The Law of International Institutions in Europe*, Manchester, 1961, p. 85.
[2] See W. Kägi, *Faire des droits de l'homme une réalité. Nos tâches, nos responsabilités*, Neuchâtel, 1968.

theless stipulates, with regard to a strictly definite category of persons, some limitations which constitute no infringement of national sovereignty. So, states are bound in international law to prosecute those who committed crimes against peace and humanity (through participation in genocide) as well as war criminals.

By dint of the obligation imposed on it by international law, a state institutes criminal proceedings against this category of criminals, regardless of their nationality and the place of the crime. A state prosecutes the perpetrators of such crimes because it is its duty under international law to do so.

To be listed among major acts of international law dealing with the liability of persons who committed crimes against humanity is the Moscow Declaration of October 30, 1943, the London Agreement of August 8, 1945, the Charters and Indictments of the International Military Tribunals and other international agreements concluded by members of the anti-nazi coalition.

Here also belong the UN General Assembly resolutions on the extradition and punishment of war criminals (3/1 of Feb. 13, 1946, and 170/2 of Oct. 31, 1947), the Convention of Dec. 9, 1948 on the Prevention and Punishment of the Crime of Genocide, the Geneva Conventions of August 12, 1949 on the Protection of War Victims, the Declaration of December 14, 1967 on Territorial Asylum, the Convention of November 26, 1968 on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, and so on.

The duty of states under international law to prosecute those guilty of crimes against peace, against humanity and war crimes was proclaimed also in the Potsdam Agreements which state that "war criminals and those who have participated in planning or carrying out Nazi enterprises involving or resulting in atrocities or war crimes shall be arrested and brought to judgement" (Point 5, Part A of Section III).

The obligations of states to fight crimes against peace, crimes against humanity and war crimes, which are imposed on them by international law, are reflected in the domestic law of some states.

Thus, in connection with the general objective of eliminating nazism in Germany, the governments of the GDR



and the FRG were given the task of prosecuting the war criminals who had become their citizens. Appropriate rules of law were enacted accordingly in both German states. Loyal to its duty and its commitments, the Government of the GDR consistently and perseveringly carries on the prosecution of war criminals. They are triable by the courts of the GDR by reason both of the former nationality of the accused and of the international obligation to prosecute such criminals. Certainly, this does not exempt them from prosecution by other countries as well.

Some other features of the legal status of persons guilty of crimes against peace, crimes against humanity and war crimes, which derive from their international criminal liability, are that they have no right of asylum, and the states in whose territory they are found may not plead any circumstances to release them from the obligation to extradite such persons.

One cannot but agree on this point with P. Radoinov (Bulgaria) who writes that "whereas states alone are subjects of international law, subjects of international crimes are persons, whether officials or private individuals. States and legal persons can and should incur merely political and financial responsibility for the international crimes committed by their citizens or members. Sanctions or punishment for international crimes are imposed either by a court of a state or by an international court set up under a special agreement between states."[1]

Thus, individuals may incur international criminal liability. This is imposed by states, whether separately or jointly. Nevertheless, the subjects of these crimes do not become subjects of international law. Neither do individuals who have acquired foreign citizenship under international agreements.

Questions of admission to and regulation of citizenship constitute the internal competence of a state. Sometimes however, they come within the purview of internationa

[1] P. Radoinov, "The Convention against Genocide", *Problemy mezhdunarodnogo prava* (Problems of International Law), in a collection of articles by international law experts from the People's Democracies, Moscow, 1961, p. 157 (translated into Russian from Bulgarian).

law. For instance, when agreements are concluded between states on matters concerning the population of the contracting parties, questions of citizenship are regulated on the basis of state sovereignty and are usually fixed in domestic laws. Witness the agreement of September 9, 1944, concluded between the Government of the Byelorussian Soviet Socialist Republic and the Polish Committee of National Liberation concerning the evacuation of the Byelorussian population from the territory of Poland and of Polish citizens from the territory of Byelorussia. In accordance with this act of international law, the Presidium of the Supreme Soviet of the Byelorussian SSR issued a decree on February 6, 1945 on the admission to Byelorussian citizenship of all persons coming over from Poland to live in Byelorussia.[1]

State sovereignty is exercised also when a state extends its jurisdiction to citizens sojourning abroad. Under Art. 83 of the Soviet Law on Universal Military Service of October 12, 1967, citizens of the USSR residing abroad are registered at the Soviet diplomatic and consular missions whose responsibility it is to see that as soon as these citizens have reached the age of 18, they present themselves to the local military office at the place of their permanent residence in the USSR.

A Soviet citizen who commits a crime abroad is to be tried by a Soviet court if what he has done is punishable by Soviet laws. If such a person has served a sentence imposed by a foreign court, the Soviet court takes it into account in meting out punishment. It may mitigate accordingly the punishment or completely relieve the guilty person

[1] International character is acquired, in particular, by questions of citizenship arising from numerous collisions between the laws of different states. In 1923, in its pronouncement on a dispute over citizens between Great Britain and France, the League of Nations' Permanent International Court of Justice stated that from the standpoint of international law as it then was questions of nationality were within the jurisdiction of a state. But if jurisdiction, which in principle belongs solely to the state, "is limited by rules of international law [meaning in that case an international agreement—*V. Sh.*] ... the dispute as to the question whether a State has or has not the right to take certain measures becomes in these circumstances a dispute of an international character" (*Publications de la cour permanente de justice internationale*, Serie B, N 4, Leyde, 1923, p. 24). See also Jan Tomko, *Op. cit.*, pp. 88-89.



from serving the punishment (Art. 5 of the Fundamentals of Criminal Legislation of the USSR and the Union Republics).

From the nature of Soviet citizenship follows the duty of the Soviet socialist state to protect the legitimate interests of its citizens by the consular or diplomatic service.[1] This too serves to give concrete expression to state sovereignty.

[1] See Section 2, Chapters I and III of the Consular Rules of the USSR (*SZ* [*Sbornik zakonov*] *SSSR* [Collected Laws of the USSR), No. 10, 1926, Item 78), as well as consular treaties and conventions concluded by the USSR with foreign states, where they deal with the protection of the legitimate rights and interests of Soviet citizens abroad.

## Chapter 3

### THE PRINCIPLE OF UNIFORMITY OF SOVIET CITIZENSHIP

"Uniform federal citizenship is established for the USSR. Every citizen of a Union Republic is a citizen of the USSR" (Art. 33 of the Soviet Constitution).

The principle of the uniformity of Soviet citizenship is also consolidated in the Constitutions of Union republics. Article 31 of the Constitution of the RSFSR, for instance, reads as follows:

"In accordance with the uniform federal citizenship established in the USSR every citizen of the RSFSR is a citizen of the USSR. Citizens of other Union Republics enjoy the same rights as citizens of the RSFSR on the territory of the RSFSR."

The norms concerned are also reinforced in the twenty constitutions of the Autonomous Soviet Socialist Republics (ASSRs).

The uniformity of Soviet citizenship stems from the essence of the federal organisation of the Soviet state. The socio-political and legal nature of the USSR as a uniform federal state has determined the emergence of a uniform federal citizenship.

The sovereignty of the USSR as a whole and the sovereignty of Union republics become integrally combined within the framework of the federal state. Far from opposing each other, the sovereignty of the federal state and the sovereignty of Union republics strengthen each other. This happens owing to the unity of state authority.

The state authority both of the USSR as a whole and its constituent Union republics is of a sovereign nature. It is exercised by each of the Soviet states within prescribed limits autonomously and independently. At the same time, this authority is uniform by its socio-political and state nature.

The uniformity of the sovereignty of the USSR and that of Union republics rests on the uniform economic and political organisation of socialist society, on the uniform system of state authority from top to bottom.

The sovereignty of the Soviet federal state as a state-law phenomenon implies in the first place the integrity of state



authority. Uniform state authority in the Soviet federal state determines the uniform sovereignty of the federal state and the uniformity of the sovereignty of the USSR and the Union republics on which it is based. The principles which provide for the uniformity of state authority in a federal state also underlie the relation between the sovereignty of the USSR and of the Union republics which are sovereign states situated in the same territory, with respect to the same citizens, by means of a uniform system of state agencies.

The uniformity of state authority in the Soviet federal state stems from the integral nature of its socio-political organisation, namely its uniform political basis which is composed of the Soviets of People's Deputies, the sovereign power of the Soviet people, and the economic basis of the USSR and Union republics, i.e. the socialist economic system and socialist ownership of the implements and means of production.

Whereas in the context of the political basis of the federal state the singleness of Soviet government is expressed in the uniform system of the organs of state authority, the Soviets, in the context of the economic basis (which ultimately determines the content of this authority) it is expressed above all in the uniform system of state property.

Another effective means of ensuring the singleness of state authority in the Soviet federal state is the uniform legal system of the federation, the principle of the unity of socialist law and order.

The Soviet legal system is characterised first of all by the identity of political purpose and ends, and by the uniform principles which integrate into a single whole the Union and republican laws. The system of Soviet laws therefore develops as a form of law which includes the rules enacted both by the organs of the USSR and Union republics. The combination of the competence of the USSR and Union republics in the field of law-making finds reflection in the very shape of Soviet law.

Strict observance of the legal competence both of the USSR and Union republics is a sine qua non of the uniformity of the legal system. Certainly, the scope of the competence of the USSR and Union republics to make laws cannot remain immutable. Besides, it largely depends on the degree

of centralisation and decentralisation of the management of different branches of state, economic, social and cultural development. Owing to certain features of one period or another of the development of the Soviet state, the range of questions referring to the jurisdiction of the republics may extend or diminish, in consequence of which their powers in the field of law-making also extend or diminish. The ratio between the amount of legal rules established by the USSR and by the republics changes accordingly.

However, the question as to what branches of legislation should be the object of exclusive competence of the USSR, and to what extent, is always linked with the question as to the limits of the sovereign rights of Union republics. Consequently, the solution of these problems could not be arbitrary but required consideration of the opinions and interests of the Union republics at whose will the Union was set up. On the other hand, these solutions must, without exception, serve to build up the federal state—the groundwork of the successful national development of each of the Union republics. Practice attests that in order to improve Union legislation Union republics often submit appropriate initiatives to the Presidium of the Supreme Soviet of the USSR.

Enactment of Union laws is of paramount significance to the uniformity of Soviet laws, as Union legislation furnishes the fundamentals of republican legislation.

The uniformity of the legal system of the Soviet federal state is constitutionally provided for also by the power of the USSR to enact the fundamentals of legislation of the USSR and the Union republics in different fields of law. The very fact of the publication of the fundamentals of legislation implies that Union republics are authorised to legislate on a wide range of questions.

The purpose of the fundamentals of legislation enacted by the Supreme Soviet of the USSR is to state the basic standpoints in the legal regulation of a definite range of problems. Republican laws, on the other hand, specify the general principles which they reproduce, and introduce fresh rules on all matters placed entirely within the competence of the republics.

An important part of republican legislation consists, in particular, of decisions and orders of the republican government such as serve to specify and amplify the Union rules of law. Enacted with reference to local conditions, they facilitate correct and expedient use of Union laws. Incidentally, it must be noted that the republican laws enacted as a sequel to Union laws must conform to the latter and be adopted strictly within the competence of Union republics.



On the basis of the principle of democratic centralism, republican legislation implements the possibility of full and free development of local features, local initiative and diverse means and methods of advancing towards the common goal.

Unification of laws occurred naturally in the Soviet multinational state as the distinctive historical and national features and habits and customs of each people became not so marked, and forms and methods of a uniform interpretation and enforcement of the laws were evolved. Uniform legality required coherent system of legislation based on the same fundamental principles and embracing both Union and republican legislation.

The intrinsic agreement and uniformity of the rules making up the Soviet legal system are made possible through the operation of the following constitutional principles.

Firstly, under Art. 73 (11) of the Soviet Constitution, the USSR exercises control over the observance of the Constitution of the USSR and ensures conformity of the Constitutions of the Union republics with the Soviet Constitution. This ensures the leading role of the USSR in establishing and maintaining the uniform functioning of the whole legal system.

From this rule it also follows that the laws and other measures of Union republics must conform to the Union laws, i.e. they may not contravene the latter. Whenever competent bodies of a Union republic fail to bring a normative act into conformity with the Union laws, the Presidium of the Supreme Soviet of the USSR issues a special decision on the matter, usually in the shape of a decree.

Secondly, the uniformity of the legal system of the Soviet federal state has its major constitutional guarantee in the principle of conformity of the Constitution of each Union republic with the Constitution of the USSR, proclaimed

in Art. 76 of the latter. This principle should be interpreted in the sense that they basically agree, which not only does not exclude but actually presupposes the right of a Union republic to introduce in its Constitution provisions reflecting its own specific features.

For this reason, Art. 76 of the Soviet Constitution, besides mentioning the fact that the Constitutions of the Union republics must conform to the Constitution of the USSR, also specially points out that each republican Constitution will take into account the specific features of the respective republic.

Thirdly, the principle of pre-eminence of the All-Union over republican laws is stated in Art. 74 of the Constitution of the USSR: "The laws of the USSR shall have the same force in all Union Republics. In the event of a discrepancy between a Union Republic law and an All-Union law, the law of the USSR shall prevail."

In ensuring uniformity to the Soviet legal system and essential agreement of law in the USSR and the Union republics, independent and, moreover, exceptional significance attaches to the principle of uniformity of the socialist rule of law.

Uniformity of socialist legality is watched over by the centralised system of Procurator's Offices headed by the Procurator-General of the USSR in whom the Constitution of the USSR (Art. 164) vests supreme power of supervision over the strict and uniform observance of laws by all ministries, state committees and departments, enterprises, institutions and organisations, executive and administrative bodies of local Soviets of People's Deputies, collective farms, cooperative and other public organisations, officials and citizens. In pursuance of this constitutional principle the Statute on the Procurator's Supervision states that the Procurator-General of the USSR and the procurators subordinate to him are to supervise the strict and uniform application of the laws of the USSR and the Union and Autonomous republics, regardless of any local distinctions or any influence that might be brought to bear.

In conditions of the unity of Soviet state authority, each of the Soviet states making part of the socialist federation has citizenship of its own, and this citizenship cannot but be uniform.



The unity of state power in the USSR rests on the sovereignty of the Soviet people which is one and indivisible. In a state of the whole people, it implies the unity of will of the whole people and is a major expression of the people's socio-political unity. Insofar as the entire Soviet people is the source of state sovereignty, the uniformity of Soviet citizenship is determined not only by the unity of government, but also directly by the unity of the Soviet people. The Soviet people, i.e. the population of the Soviet Union as a whole, is the population of the Union republics in the aggregate. That is why citizens of Union republics are simultaneously citizens of the USSR. Uniformity of federal citizenship is therefore an essential prerequisite of the sovereignty of federal state authority.

The primary source of the sovereignty of the USSR and Union republics was the sovereign will of the socialist nations. The unity of the federal state, the USSR, as well as the equality of the subjects of the Soviet federation (the Union republics in the USSR) ensue from the sovereignty of nations. Therefore the unity of socialist peoples within the framework of Soviet federation is also at the basis of uniform Soviet citizenship.

Article 33 of the Soviet Constitution, which enunciates the principle of uniformity of Soviet citizenship, contains two basic provisions, viz. (1) that uniform federal citizenship is established for the USSR, and (2) that every citizen of a Union republic is a citizen of the USSR.

Thus, first, there is in the USSR uniform federal citizenship, which extends to all citizens of the USSR, and, second, the Union republics forming the USSR have citizenship of their own, every citizen of a Union republic being simultaneously a citizen of the USSR. To quote an example, under the Constitution of the Ukrainian SSR, every citizen of the Ukrainian Republic is a citizen of the USSR; citizens of all other Union republics enjoy equal rights with citizens of the Ukrainian Republic while in its territory.

The Constitutions of other Union republics also establish two basic points as follows:

1. Every Union republic has citizenship of its own, and a citizen of a Union republic is simultaneously a citizen of the USSR. This point, as was noted already, is contained in Art. 33 of the Soviet Constitution. But the very fact

of its being laid down in republican Constitutions is an expression of their sovereignty.

2. Citizens of Union republics enjoy equal rights with citizens of every Union republic in whose territory they may be. This proclaims the principle of legal equality for citizens of all Union republics. Equality of Soviet citizens before the law is ensured by the fact that they all have equal rights and duties established specifically for citizens of the USSR, and that they enjoy equal rights with citizens of every Union republic in whose territory they may be. Legal equality of Soviet citizens is also characterised by the fact that as they enjoy equal rights, so do they have equal duties. Legal equality of citizens is an element of uniform Soviet citizenship.

In none but a socialist state in which the exploitation of man by man has been abolished, full equality is ensured by material means, and all citizens take part in government, can one speak of uniform citizenship. Socialist citizenship is typified not only by its being uniform, but also by the fact that this institution fully conforms to the equality of all citizens.

Soviet citizenship is a combination of citizenship of the USSR and Union republics in which each of them has an objective existence and is unique and, at the same time, they all are interdependent and present a solid unity. For this reason, uniform federal citizenship must not be regarded as some sort of a sum of citizenship of the USSR and of a Union republic.

The principle of uniform Soviet citizenship is characterised by the following basic points.

First of all, it expresses the fact that a Soviet citizen has simultaneously federal and republican citizenship. A situation is possible in which a Soviet citizen is a citizen of the USSR only, without being a citizen of a Union republic. This occurs when somebody permanently residing abroad has acquired Soviet citizenship by requesting the Presidium of the USSR Supreme Soviet thereto. Such person becomes a citizen of a Union republic only after arriving at his address in the USSR. No person may be a citizen of a Union republic unless he is a citizen of the USSR because citizenship of a Union republic and, consequently, of the USSR,



may only be acquired by one residing in the territory of the given Union republic. This is a concrete expression of uniform state sovereignty of the USSR.

Secondly, Soviet citizenship is marked by a combination of federal and republican citizenship conditioned by each other. This can happen only in a socialist federation in which uniform state sovereignty is characterised by the combination of and fundamental mutual relation between the sovereignty of the USSR and that of the Union republics.

Thirdly, the principle of uniform Soviet citizenship is characterised by Soviet citizens' equal status in law, which is a sine qua non of the exercise of this principle.

The question as to the equal legal status of Soviet citizens in the territory of Union republics is closely connected with the acceptance by every Union republic of citizens of the other Union republics as its own. Is such acceptance possible, and what grounds is it based on? This is a legitimate question, the more so as it has not yet been answered either in theory or in legislation. For all that it is made increasingly relevant by the growing migration of the population, a fact which is desirable and natural under socialism and the building of communism.

It seems to us that a citizen's permanent place of residence should be the main yardstick for recognising Soviet citizens as citizens of a given Union republic. A citizen of the RSFSR, for instance, will be recognised as a citizen of the Ukraine only if he has changed his address and taken up permanent residence in the territory of the Ukraine. When, however, a citizen of the RSFSR merely sojourns in the territory of the Ukraine, he continues as a citizen of the RSFSR.

Article 33 of the Constitution of the USSR speaks of uniform federal citizenship which is established for citizens of the USSR. The question, however, arises, how far does the notion of *uniform federal citizenship* embody the principle of uniform citizenship? Furthermore, is it meant especially to express the latter? We answer this question in the affirmative. Suffice it to say that Art. 33 states: "Uniform federal citizenship is established for the USSR."

It is worth noting that the first Constitution of the USSR (1924) offered a somewhat different interpretation of the notion of *uniform federal citizenship*, viz. "uniform

federal citizenship is established for citizens of the Union Republics" (Art. 7).

It is easy to see that in the 1924 Constitution of the USSR "uniform" was meant as "common" (within the limits of the USSR). Certainly, Art. 7 of the 1924 Constitution too proclaimed the principle of uniform Soviet citizenship as it legalised the correlation between federal and republican citizenship. Nevertheless, the principal meaning of the phrase "uniform federal citizenship" boiled down to the establishment of citizenship of the USSR.

The 1936 Soviet Constitution marked a significant improvement in this respect. By the second part of Art. 21 it made a provision similar to that contained in Art. 7 of the 1924 Constitution. At the same time, analysis of the first part of Art. 21 shows that in it the meaning of the phrase "uniform federal citizenship" can no longer be equated to the establishment merely of common federal citizenship—that of the USSR. That would have been simply tautological, saying, in effect, that citizenship of the USSR was established for citizens of the USSR. By that method the legislator had focussed, as it were, the main characteristics of the principle of uniform Soviet citizenship, expressing them in a concise formula. This provision, contained in Art. 21 of the old, 1936, Constitution, was reproduced in Art. 33 of the Soviet Constitution adopted in 1977.

Historically, the emergence of the principle of uniform Soviet citizenship relates to the period in which the forms of co-operation between different peoples were initially developed. This period terminated in January 1918 in the emergence of the Russian Socialist Federative Soviet Republic. Applying the principle of autonomy, the Russian Federation enabled many peoples previously without their own statehood to set up their national states and national state formations. The republics of the Tatars, Bashkirs, Chuvashes, Yakuts and other peoples which had freely joined in a federation with the Russian people on the basis of autonomy had citizenship of their own from the start.

Uniform federal citizenship (citizenship of the RSFSR) and citizenship of the Autonomous republics, subjects of federation was established. For instance, an inhabitant of the Bashkir ASSR, who was a citizen of that republic, was simultaneously a citizen of the RSFSR. The uniformity



of Soviet citizenship within the limits of the RSFSR was characterised by the equal status in law of citizens of the RSFSR throughout the territory of the Federation.

A great contribution to the legislative practice of shaping uniform Soviet citizenship was made also by the federation of the Transcaucasian republics in 1921.

The next stage in the formation of the principle of uniform Soviet citizenship is connected with the emergence of the highest form of socialist federation—the Union of Soviet Socialist Republics (1922). The creation of a multinational socialist federal state was a natural process of the drawing together and fraternal unity of the independent Soviet republics.

Federal citizenship which embodies the cardinal elements of the principle of uniformity began to take shape already in the period of the military alliance of the independent Soviet republics, when relations between them had acquired a federal character. At that time certain republics enacted laws equalising the legal status of citizens of the other republics with that of their own citizens. So, the decree issued by the Council of People's Commissars of the Ukrainian SSR on February 13, 1919 stated: "Citizens of all Soviet republics (Russia, Lithuania, Latvia, Estland) shall have the same rights and duties as Ukrainian citizens."

During the Civil War and foreign armed intervention a certain measure of uniformity of Soviet citizenship found expression in particular in the fact that Soviet republics began to draft for military service not only their own citizens, but also citizens of other fraternal republics who were in their territory. In February 1919, the Soviet Government of Latvia, for instance, decreed: "... all Letts residing in Soviet Russia and the Ukraine shall, upon mobilisation being announced in them, be called up for military service on the same footing with native citizens of these countries."

A definite contribution to the formation of uniform Soviet citizenship was made by the treaties of alliance concluded between some independent Soviet republics when economic alliance was added to their military alliance.

For example, the Treaty of Alliance concluded on September 13, 1920 between the RSFSR and the Khorezm People's Soviet Republic ran: "...The RSFSR shall confer the political rights of Russian citizens on citizens of Khorezm in

Russia who belong to the working class or the peasantry using no hired labour, if they reside on the territory of Russia for purposes of work. The KhPSR, on its part, undertakes to confer political rights on Russian citizens on the strength of the aforementioned provisions established by the RSFSR with respect to citizens of the KhPSR."

In the process of its formation (which included, among other things, the formation of uniform federal citizenship), the federal state faced the need to overcome many differences in both citizens' legal status and citizenship rules in the Soviet republics. It was not by chance, therefore, that during the period of the formation of the USSR some jurists urged the need to prepare uniform legislation on questions of citizenship.

Uniform federal citizenship and, simultaneously, the principle of uniformity of Soviet citizenship were finally established when the USSR was formed. The great historic plan of the creation of the USSR belongs to Lenin. On the basis of his directions, colossal work was carried out to develop federal ties among the independent Soviet republics and join them into a new federal state, the Union of Soviet Socialist Republics, within the framework of which the Union republics retained their state sovereignty. A form of state organisation of the independent Soviet republics was found which fully met the tasks of the building of socialism and the interests of all the independent republics, and ensured a correct combination of the principle of democratic centralism with the sovereignty of nations.

Uniform federal citizenship was first established by Art. 21 of the Treaty on the formation of the Union of Soviet Socialist Republics, which said: "Uniform federal citizenship is established for citizens of the Union republics."

Establishment of uniform federal citizenship met the needs and aspirations of millions of Soviet people. In expressing the will of the Ukrainian people, the 7th Ukrainian Congress of Soviets in its decision on the Fundamentals of the Constitution of the Union of Soviet Socialist Republics of December 13, 1922 stipulated the establishment of uniform federal citizenship for citizens of the Union (Art. 14).[1]

[1] *Stenograficheskiy otchot VII Vseukrainskogo syezda Sovietov* (Stenographic Record of the 7th Ukrainian Congress of Soviets), Kharkov, 1922, pp. 64-65.



In spite of this, when the first Union Constitution was being drafted, some members of the Constitutional Commission would belittle the role and significance of federal citizenship, assigning the decisive role to republican citizenship. It was suggested in the process that federal citizenship should be recognised only in relations with foreign states, while in relations between Soviet republics the law on republican citizenship should be effective. That view met with serious objections from the members of the Constitutional Commission, distinguished leaders of the Communist Party and the Soviet state M. I. Kalinin, D. I. Kursky, G. V. Chicherin and others.

What significance was attached by the Communist Party to the establishment of uniform Soviet citizenship within the federal state clearly follows from the fact that this matter was repeatedly taken up by a commission appointed by the Central Committee of the Russian Communist Party (Bolsheviks) when the first Constitution of the USSR was being drafted.

A special subcommission under G. V. Chicherin, set up by the Constitutional Commission appointed by the Central Committee of the Party, unanimously supported the establishment of uniform federal citizenship. Subsequently, after the draft of the Constitution of the USSR had been discussed by an enlarged Commission of the Central Executive Committee, it was considered again by the Commission of the Central Committee of the Russian Communist Party (Bolsheviks). It must be observed that the Commission approved as final the wording of Art. 7 of the Constitution of the USSR, establishing uniform federal citizenship. An exceptionally important decision was put on record. It was that the "introduction of federal citizenship does not rule out republican citizenship". This decision was then confirmed by a plenary meeting of the Central Committee of the RCP(B), held on June 26-27, 1923.

Article 7 of the 1924 Soviet Constitution gave legal force both to the fact itself of uniform federal citizenship and the principle of uniform Soviet citizenship in the federal state, as, alongside federal citizenship, this article set forth republican citizenship. Nevertheless, having proclaimed the principle of uniformity, Art. 7 failed to spell out the meaning of that principle.

This remark also refers to the corresponding articles of the Constitutions of the Union republics. So, for example, the Constitutions of the RSFSR (1925, Art. 11), the Turkmen SSR (1927, Art. 9), and the Uzbek SSR (1931, Art. 12) merely stated, in accordance with Art. 7 of the 1924 Soviet Constitution, that citizens of the other Union republics enjoy in the territory of the given republic equal rights with its own citizens.[1]

To a certain extent, this particular fact was seized upon by chauvinist and nationalistic elements at the time of the drafting and adoption of the Soviet Citizenship Rules, in order to distort this principle. In the course of the detailed and active discussion of the draft Rules by the commissions of the Central Executive Committee of the USSR it was revealed that there were different approaches to the solution of questions of citizenship. One of them was marked by clearly centralist sentiments. Its supporters recognised in substance only federal citizenship, arguing that as every Soviet citizen had the same rights and duties in the territory of every Union republic, it made republican citizenship legally meaningless.

Another standpoint gave pre-eminence to republican citizenship. Its supporters held that acquisition of federal citizenship should be made wholly dependent on one's having republican citizenship. They also suggested an extremely complicated procedure of transfer from the citizenship of one Union republic to that of another and of admission to and withdrawal from republican citizenship. Lastly, a view was held that federal citizenship should be recognised only formally, merely as a supplement to the republican. The content and meaning of Soviet citizenship were reduced entirely to republican citizenship.

In the course of the debates on the draft Citizenship Rules, the principle of uniform Soviet citizenship was given final recognition.[2] Nevertheless, even after this act had

[1] *Istoriya Sovietskoi Konstitutsii (v dokumentakh), 1917-1956 gg.* (A History of the Soviet Constitution [in documents], 1917-1956), ed. by S. S. Studenikin, Moscow, 1957, pp. 499-500, 504, 514-515, 531, 574-575, 592, 637.

[2] Report of People's Commissar for Foreign Affairs G. V. Chicherin on Union Citizenship, Delivered at the 2nd Session of the 2nd CEC



come into effect, a heated discussion still went on among Soviet jurists about the relation between federal and republican forms of citizenship and what it might be based on, i.e., in fact, about the principle of uniform Soviet citizenship in the federal state.[1]

Subsequently, the factors which had determined the formation of the principle of uniform Soviet citizenship in the USSR were thoroughly elucidated and adequately explained in Soviet jurisprudence on the basis of the lessons drawn from the building of socialism.

of the USSR on October 24, 1924, *Byulleten 2 sessii TsIK Soyuza SSR* (Bulletin of the 2nd Session of the USSR CEC), No. 13, 1924, pp. 472-474.

[1] V. Ignatyev, "Federal Citizenship", *Sovietskoye stroitelstvo* (Soviet Development), No. 3 (44), 1930, p. 2; M. O. Reikhel, *Soyuz SSR i soyuzniye respubliki* (The USSR and the Union Republics), Moscow, 1930, p. 134; S. S. Kishkin, "Soviet Legislation", *Sovietsky federalizm* (Soviet Federalism), Moscow-Leningrad, 1930, pp. 64-65.

## Chapter 4

### THE DEVELOPMENT OF SOVIET CITIZENSHIP LAWS

Enactment of Soviet citizenship rules is a major aspect of the state's legal activities. Legislation on citizenship has always been the exclusive prerogative of the higher organs of state authority of the USSR.

The first, 1924, USSR Constitution (Chapter I, Art. 1), placed fundamental legislation in respect of federal citizenship as well as the rights of aliens under the jurisdiction of the Union of Soviet Socialist Republics as exercised through its higher bodies.

The Constitution therefore granted the Union republics the right independently to legislate on citizenship simultaneously providing for the USSR guidance of the legal policy on these matters.

The 1936 Constitution of the USSR referred to the competence of the USSR the enactment of laws on federal citizenship as well as on the rights of aliens (Chapter II, Art. 14, XXII), thus stipulating the exclusive competence of the higher Union bodies of government to establish Soviet citizenship rules.

The 1977 Constitution of the USSR does not expressly mention among the powers of the Supreme Soviet of the USSR publication of laws on citizenship but it clearly follows from Art. 33 ("The grounds and procedure for acquiring or forfeiting Soviet citizenship are defined by the Law on Citizenship of the USSR") that the adoption of a Law on Citizenship of the USSR is in the competence of the Supreme Soviet of the USSR, the highest body of state authority in the Soviet Union.



The delimitation of competence between the USSR and its subjects, the Union republics, is aimed at the exercise of uniform centralised management of the economy and policies of the country in close combination with the independence and growing initiative of the Union republics. Democracy as an inalienable feature of the Soviet state system is indissolubly united with centralism, forming one of the cardinal principles of delimitation of state competence—the principle of democratic centralism. Alongside the principle of integral state sovereignty in the Soviet federal state, the principle of democratic centralism also is at the basis of the delimitation of competence with respect to the rule-making activities of the USSR and the Union republics on citizenship as well.

The laws on Soviet citizenship, as well as other branches of socialist law, are inherently democratic and humanitarian. The principle of socialist democratism pervades the entire rule-making activities of the higher organs of government in producing rules of Soviet citizenship. Socialist democratism—and this is essential—is embodied in the contents of these rules and the conditions and order of their application.

In the Soviet socialist state in which laws express the will of the whole people, direct evidence of genuine democratism is to be found in the fact that the laws are unswervingly enforced and their execution by all the bodies of the state, officials and citizens is provided for and guaranteed.

The democratism of socialist citizenship law finds expression also in the fact that it provides for a strictly individual consideration of matters concerned with the citizenship of one person or another, consistently pursuing the principle of full equality of individuals, irrespective of origin, social and family status, income, nationality, race, religion, and so on.

In its treatment of citizenship rights, Soviet legislation was the first in the world to give practical expression to the equality of the sexes and of legitimate and illegitimate children, thus demonstrating the supreme humanism of socialist law.

Some features of the legal regulation of Soviet citizenship relating to the social origin of individuals (to be dealt with further on) were normal and natural in the initial period of Soviet government, when there were antagonistic

classes in society and the class struggle was in progress.

As it translates into practice the principle of equality of the different nationalities and races with reference to Soviet citizenship, legislation is a most important legal form in which the national and state organisation of the socialist nations is entrenched and developed further.

Of no small importance to the description of Soviet citizenship laws is also the fact that they contain no discriminatory restrictions, no cumbersome or purposely complicated conditions and procedures pertaining to the regulation of citizenship. The wording of the laws is clear and easily understood by all.

In making the rules regulating a certain area of social relations, the state proceeds from a whole range of concrete economic, political and legal conditions and needs. Whether a law is expedient for the state—and, consequently, whether it is expedient politically—depends precisely on this fact. All rule-making in the socialist state is based on the scientifically founded policy of the Communist Party of the Soviet Union.

Ever since the young Soviet state came into being, its law-making on matters of citizenship, juridically embodied in the enactments of the higher organs of state authority, has been determined by the steadfast course pursued by the Communist Party in home and foreign affairs.

The Great October Socialist Revolution smashed up the machinery of the bourgeois state and abolished its juridical system.[1] Former subjects of the Russian Empire became

[1] The laws on allegiance operative in Russia during many decades were a typical sample of the anti-democratic, chauvinist policy of the tsarist autocracy. The Law on the Rules of Naturalisation of Aliens and Their Withdrawal from Russian Citizenship of 1864 set the rule under which an alien could file a petition for naturalisation only after five years' residence in Russia. The petition was to state the occupation of the applicant, his way of life, the address on first coming to stay in Russia, and so on. Jews and dervishes were not to be granted Russian citizenship. Married women were not allowed to become Russian subjects separately from their husbands. The law gave the Minister of the Interior discretionary powers. He was authorised to refuse to grant naturalisation to aliens even if they lacked no qualifications stipulated by the law. See *Polnoye sobraniye zakonov Rossiiskoi imperii* (The Complete Laws of the Russian Empire), Collection No. 2, Vol. XXXIX, Part I, 1864, St. Petersburg, 1867, pp. 107-108.



citizens of the most democratic of all countries in human history. Naturally, there were among the very first decrees issued by the young Soviet government such as were aimed directly at the establishment of the new institution of Soviet citizenship.

The Code of enactments on Soviet citizenship is fittingly headed by the Decree of the All-Russia Central Executive Committee (ARCEC) of November 10 (23), 1917, On the Abolition of Social Estates and Civil Ranks, by which "a single designation of citizens of the Russian Republic" was established for the entire population of Russia. This constitutional act marked the beginning of all subsequent legislation on Soviet citizenship.

Before the formation of the Union of Soviet Socialist Republics statutes referring to citizenship were enacted in different Soviet republics. The republics' similarity of government, identity of tasks and aims, and growing federative ties, all were conducive to great similarity in the legal regulation of citizenship. The leading role in the elaboration of Soviet citizenship rules belonged to the RSFSR.

Particular importance in that respect attaches to the Decree on Naturalisation, issued by the ARCEC on April 1, 1918,[1] the Decree on Naturalisation of Aliens, issued by the Council of People's Commissars (CPC) of the RSFSR on August 22, 1921,[2] and the Decree on Depriving Some Categories of Persons Residing Abroad of Citizenship Rights, issued by the CPC RSFSR on October 28, 1921.[3] Similar acts regulating the terms and procedures of admission of aliens to Soviet citizenship as well as deprivation of citizenship were adopted also in other Soviet republics. All these enactments met the requirements of the political situation at that time and were essential to the consolidation of the proletarian dictatorship and of the whole of the Soviet social and state system.

The decree issued by the ARCEC on April 1, 1918, and the decree issued by the CPC RSFSR on August 22, 1921, in regulating admission to Soviet citizenship introduced

[1] *SU* (*Sbornik ulozhenii*) *RSFSR* (Collected Statutes of the RSFSR), No. 31, 1918, Item 405.
[2] *SU RSFSR*, No. 62, 1921, Item 437.
[3] *Ibid.*, No. 72, 1921, Item 578.

the general rule that every alien residing on the territory of the RSFSR could acquire Soviet citizenship by applying to the local Soviet at the place of his residence. Only in the exceptional cases of petitioners residing abroad, the petitions had to be considered by the All-Russia Central Executive Committee.

The right of local Soviets to admit to Russian citizenship aliens residing on the territory of the RSFSR and belonging to the working class or to the peasantry not employing the labour of others was based on Art. 20 of the Constitution of the RSFSR. The decree issued by the CPC RSFSR on August 22, 1921 introduced, however, new rules which altered the previous procedure. By this decree, aliens not belonging to the working classes were naturalised exclusively by *gubernia* (regional) Executive Committees. This measure was caused by the extremely complicated circumstances of the class struggle in the country which had suffered foreign intervention and civil war.

Meanwhile the situation urgently required that something be done about the citizenship rights of the former subjects of the Russian Empire who resided abroad and either had failed to get passports and other papers confirming their Soviet citizenship or left Russia after November 7, 1917, without official permission. There were also those who had voluntarily joined the White armies and fought or had been otherwise involved in counter-revolutionary action against Soviet rule. By the decrees issued by the CPC RSFSR on October 28, 1921, and by the ARCEC and CPC RSFSR on December 15, 1921,[1] such persons were deprived of Soviet citizenship.

Before the formation of the USSR, citizenship laws of the RSFSR and the other Soviet republics naturally did not present a uniform systematic whole. The first statutes on Soviet citizenship, which were born in the thick of the revolutionary events and had to meet the vital needs of the intense class struggle, did not cover all matters bearing on the recognition, acquisition or loss of Soviet citizenship. Nevertheless, they supplied the foundations from which all subsequent legislation in that field developed and improved. It must also be noted that the citizenship laws adopted

[1] *SU RSFSR*, No. 1, 1922.



at a later date assimilated the far-reaching and all-round democratism of these early acts.

The first, 1924, Union Constitution proclaimed the rules under which the USSR alone was empowered to lay down the starting-points and principles in this branch of legislation. Enactment of Union laws on citizenship, which were of a fundamental nature, in principle provided the base for republican legislation. In pursuance of the aforementioned constitutional rules, the following Union acts were successively adopted and put into effect: Union Citizenship Rules of October 29, 1924,[1] USSR Citizenship Rules of June 13, 1930,[2] and USSR Citizenship Rules of April 22, 1931.[3]

The Union Citizenship Rules of 1924 marked an essentially new stage in the development of legislation on Soviet citizenship. They laid down the conditions on which a person was to be recognised as a Soviet citizen, thereby establishing the circle of persons who were Soviet citizens.

The Rules referred admission and restoration to Soviet citizenship to the jurisdiction simultaneously of the Central Executive Committees of the Union republics and the Central Executive Committee of the USSR. They also dealt with the loss of Soviet citizenship, change of citizenship through marriage, and so on.

The adoption of the 1924 Rules put an end to the somewhat mixed approach to these matters in different Soviet republics. Now a uniform approach was exercised.

The purpose of the USSR Citizenship Rules, approved by the CEC and CPC USSR on June 13, 1930, was to fill in some gaps in the old laws. The Rules introduced some substantial changes in the procedures whereby the circle of Soviet citizens was defined, and set down the procedures of deprivation of Soviet citizenship, not mentioned in the 1924 Rules. Substantial modifications were introduced in the earlier complicated system for the establishment of citizenship by reason of birth and for change of citizenship of children at the change of citizenship by parents. Under the 1930 Rules, naturalisation of aliens residing abroad, restoration to Soviet citizenship, and withdrawal from

[1] *SZ SSSR*, No. 23, 1924, Item 202.
[2] *Ibid.*, No. 34, 1930, Item 367.
[3] *Ibid.*, No. 24, 1931, Item 196.

Soviet citizenship of persons residing abroad were in the exclusive competence of the Presidium of the CEC of the USSR while the 1924 Rules stipulated that these matters could be decided upon either by the Presidium of the CEC of the respective Union republic or the Presidium of the CEC of the USSR.

The USSR Citizenship Rules adopted on April 22, 1931 by the CEC and CPC USSR for the most part repeated the 1930 Rules. The more essential changes introduced in them consisted in greater prominence given to republican citizenship. Citizenship of the USSR could no longer be conferred unless admission to citizenship of a Union republic was granted simultaneously. An alien filing a naturalisation application was to state a citizen of which republic he would like to be. The 1931 Rules also considerably altered the correlation between the competence of Union and republican higher organs of power. The competence of the Union republics with respect to regulation of citizenship was extended. The right of naturalisation of aliens residing abroad, deprivation of citizenship and restoration to citizenship of persons who had lost it ceased to be the exclusive power of the USSR. Deprivation of and restoration to Soviet citizenship were now the business of the Presidium of the CEC of the USSR and the Presidiums of the CECs of Union republics.

Admission of persons residing on the territory of the USSR to Soviet citizenship was granted by territorial (regional) Executive Committees, Central Executive Committees of Autonomous republics and Executive Committees of Autonomous regions. Nevertheless, the Central Executive Committee of a Union republic could submit naturalisation of such persons to the consideration of district Executive Committees and the Soviets of cities with the status of independent administrative-economic units. Also envisaged were simplified procedures of admission to Soviet citizenship of aliens belonging to the working class or to the peasantry and residing in the USSR for purposes of employment, of aliens availing themselves of the right of asylum, and also in cases of change of citizenship on account of marriage. The 1938 Law on Soviet Citizenship,[1] which supplanted the 1931 Rules, was adopted by the Supreme

[1] *Vedomosti Verkhovnogo Sovieta SSSR*, No. 11, 1938.



Soviet of the USSR on August 19, 1938, on the basis of Art. 14 (XXII) of the 1936 Constitution of the USSR. In distinction from the previous enactments, the 1938 Law established a rule regulating recognition of Soviet citizenship. This served to define and specify the range of persons who are Soviet citizens. Whereas earlier every person who resided on the territory of the USSR, unless his affiliation to citizenship of a foreign country was proved, was considered to be a Soviet citizen, under the present Citizenship Law no one was to be mechanically registered as a Soviet citizen—sometimes even contrary to his or her wish.

The Law enhanced the role played by the higher organs of state authority in deciding on questions of acquisition or loss of Soviet citizenship. The right of local Soviets and higher organs of government of the Autonomous republics to grant admission to Soviet citizenship was abolished.

The 1938 Law stated that aliens, irrespective of nationality and race, shall be admitted to Soviet citizenship upon applying to the Presidium of the USSR Supreme Soviet or the Presidium of the Supreme Soviet of the Union republic on whose territory they resided. The earlier privileged procedures for the acquisition of Soviet citizenship were abolished. Withdrawal from Soviet citizenship was granted solely by the Presidium of the USSR Supreme Soviet. One could be deprived of Soviet citizenship only under a special decree, issued by the Presidium of the USSR Supreme Soviet in each individual instance.

For the first time in the history of Soviet legislation on citizenship the legal notion of a *stateless person* was introduced.

It must be observed at the same time that some essential questions of citizenship remained unsettled by the 1938 Law. The Law did not regulate the conditions and procedures of restoration to Soviet citizenship. It gave no directions on the citizenship of Soviet children adopted by aliens. There was in it no rule on admission to Soviet citizenship by reason of birth (this question was dealt with by the Codes on Marriage, the Family, and Guardianship of the Union republics).

For this reason, the Presidium of the USSR Supreme Soviet subsequently had to issue a number of decrees containing some rules which regulated the procedure of acqui-

sition of and restoration to Soviet citizenship as well as withdrawal from it.[1]

The new Citizenship of the USSR Act of 1978 has consolidated the provisions of existing legislation that have fully demonstrated their viability, while at the same time allowing for the established practice and generally accepted norms of international intercourse. All the provisions of this Act fully correspond to the obligations assumed by the USSR under relevant international treaties, agreements, and conventions. The great importance of the new Act is also that it has filled gaps that previously existed in this branch of legislation.

In other socialist countries, citizenship relations are regulated by constitutional rules, special citizenship laws, and normative acts adopted on their basis by governments, ministries and departments. In order to eliminate collision of the citizenship rules, socialist countries conclude bilateral and multilateral agreements.

The constitutions first of all establish the general principles of the regulation of citizenship relations. Art. 34 of the Constitution of the People's Republic of Bulgaria, Art. 19 (4) of the Constitution of the German Democratic Republic, and Art. 16 of the Constitution of the Socialist Republic of Rumania state that the procedure of acquisition and deprivation of citizenship is determined by law. Under Art. 93 (25) of the Bulgarian Constitution, the State Council confers, restores to, and takes away Bulgarian citizenship.

Constitutional Law No. 125 of the Czechoslovak Socialist Republic, issued on December 20, 1970, proclaims the principle of uniform Czechoslovak citizenship. It states: "1. Czechoslovak citizenship is uniform. 2. Every citizen of Czechoslovakia throughout the territory of the Czechoslovak Socialist Republic has equal rights and duties. 3. Every Czechoslovak citizen is simultaneously a citizen of the Czech Socialist Republic or the Slovak Socialist Republic." Matters bearing on the acquisition or deprivation of citizenship are referred to the competence of the Federal Assembly.

The Constitution of the Socialist Federal Republic of Yugoslavia contains a provision that a "Yugoslav citizen shall not be deprived of citizenship, expelled from the

[1] *Vedomosti Verkhovnogo Sovieta SSSR*, No. 31, 1940; No. 13, 1941; No. 78, 1945; Nos. 2, 21, 36, 37, 40, 1946; No. 18, 1947; No. 28, 1948.



country or extradited to another state. A citizen residing abroad may, in exceptional circumstances and on legal grounds, be deprived of Yugoslav citizenship, if by his activities he harms the international or other interests of Yugoslavia and if he refuses to carry out the fundamental duties of a citizen, being simultaneously a citizen of another state" (Art. 54).

The Constitutions of Bulgaria (Art. 57), the GDR (Art. 38) and Yugoslavia (Art. 54) proclaim the principle of legal defence (protection) of their citizens residing abroad.

No citizenship rules are included in the Constitutions of Hungary and Poland.

In the 1950s and 1960s, most of the European socialist countries adopted citizenship laws. At present citizenship relations are regulated by the Citizenship Law of October 8, 1968 in Bulgaria; the Citizenship Law of June 9, 1957 in Hungary; the Citizenship Law of February 20, 1967 in the GDR; the Citizenship Law of February 15, 1962 in Poland; the Citizenship Law of December 17, 1971 in Rumania. In Czechoslovakia, citizenship relations are regulated by the Law on the Acquisition and Deprivation of Citizenship of April 1, 1958, the Federal Law on the Principles of Acquisition and Loss of Citizenship of December 19, 1968, the Law of the Slovak Socialist Republic on the Granting and Deprivation of Citizenship of April 29, 1969, and the Legislative Measure of the Czech National Assembly of September 16, 1969.[1] And in Yugoslavia they are regulated by the Citizenship Law of September 15, 1964.

The pattern of these laws has much in common. Usually they include the following four main sections: (1) general provisions, (2) acquisition of citizenship, (3) loss of citizenship, and (4) the handling of questions arising in connection with the granting or loss of citizenship.

The first section usually contains the definition of the criteria of citizenship, i.e. the person's legal belonging to the state, settles questions of dual citizenship, and so on. The first sections of the Federal Law of the CzSR on the

[1] According to the Constitutional Law of the Czechoslovak Socialist Republic (CzSR) of December 20, 1970, the existing citizenship legislation remains in force pending the adoption by the Federal Assembly of corresponding legislative enactments.

Principles of Acquisition and Loss of Citizenship of December 19, 1968, and of the Yugoslav Law of September 15, 1964 also proclaim the principle of uniform citizenship for all the Union republics.

In most capitalist countries, the general provisions referring to the legislative regulation of citizenship are contained in their constitutions.

The Constitutions of the USA and the FRG, for instance, define the range of persons considered to be citizens. In the United States, citizens are "all persons born or naturalised in the United States, and subject to the jurisdiction thereof" (Art. XIV, Amendment to the Constitution). In the FRG, under Art. 116 of the Constitution "(1) ... a German within the meaning of this Basic Law is a person who possesses German citizenship or who has been admitted to the territory of the German Reich, as it existed on 31 December 1937, as a refugee or expelled of German stock (*Volkszugehörigkeit*) or as the spouse or descendant of such person. (2) Former German citizens who, between 30 January 1933 and 8 May 1945, were deprived of their citizenship for political, racial or religious reasons, and their descendants, shall be regranted German citizenship on application. They shall be considered as not having been deprived of their German citizenship if they have established their domicile (*Wohnsitz*) in Germany after 9 May 1945 and have not expressed a contrary intention."

Constitutions also proclaim the main principles of the regulation of the institution of citizenship. Under Art. 22 of the Italian Constitution, "nobody may be deprived of his legal capacity, citizenship or name, for political motives". Article 16 of the Constitution of the FRG states: "(1) No one may be deprived of his German citizenship. Loss of citizenship may arise only pursuant to a law, and against the will of the person affected it may arise only if such person does not thereby become stateless. (2) No German may be extradited to a foreign country. Persons persecuted for political reasons shall enjoy the right of asylum."

In countries with a federal pattern of state organisation, constitutional provisions also touch upon the competence of the federation and its subjects in regulating citizenship.



Article 1, Section 8 (4) of the US Constitution states that the Congress has power to "establish a uniform rule of naturalisation". Under the Constitution of the FRG, enactment of laws on federal citizenship is in the exclusive competence of the Federation (Art. 73, 2).

In the capitalist countries, questions of citizenship are also regulated by current legislation.

In Britain, provisions on British citizenship (nationality) are contained in numerous statutes adopted at different times and on different occasions over the past three hundred years. Here refer, for instance, the Act of Succession to the Throne of 1701, laws on merchant shipping, on measures against piracy, on the armed forces, on criminal justice, on granting independence to colonies, on Commonwealth countries, and so on, as well as special laws on British nationality, on aliens, on naturalisation and immigration. Relatively more important among them are the 1948 British Nationality Act with later amendments (it came into effect on January 1, 1949), and the Immigration Law of 1971. In the United States, the Immigration and Naturalisation Act, passed on June 27, 1952, summed up the laws on these matters previously in effect. At present this law, somewhat altered and amended, is included in Section 8 of the US Code of Laws entitled "Aliens and Nationality".

In the Anglo-Saxon countries, an important role in the egulation of citizenship is assigned to judicial precedent.

The Italian Nationality Act of July 13, 1912, with subequent amendments, is the principal measure on acquisition and loss of citizenship. The provisions of this act were developed by a number of Royal Ordinances (August 2, 1912, July 9, 1939, and so on) on the procedure of acquisition of Italian citizenship by aliens and registration of citizens.

In France, the whole complex of citizenship matters is regulated by the Nationality Code (Code de la nationalité française) adopted under an Ordinance issued on October 19, 1945. The Nationality Code was incorporated in the Code Civile and was subsequently repeatedly added to and amended by the acts of May 24, 1951, January 7, 1959, July 28, 1960, February 2, 1961, December 22, 1961, and December 28, 1967 (all acts supplementing and amending the Code are incorporated in it).

In the FRG, citizenship relations are regulated by the

Kanzleigesetz (Chancellor Law) of July 22, 1913, amended and supplemented by the laws of May 15, 1955, December 19, 1963, September 8, 1969, and June 23, 1970. Apart from the enactments enumerated above, citizenship is dealt with by the laws of February 22, 1955, May 17, 1956, and September 29, 1969.

The purpose of Soviet citizenship laws is to establish rules serving a strictly defined aim and having for their object a specific area of social relations.

In the process of regulation of relations associated with affiliation to citizenship there take shape state-law (political) relations between individuals (physical persons) and the state. One feature of the legal content of these legal relations is that by expressing different law-regulated relations of citizenship between person and state they furnish the legal basis for the establishment, change or termination of citizenship itself.

Citizenship relations form a group of social relations, which objectively requires specific methods of its legal regulation. The distinctive features of legal regulation of these relations are expressed above all in the specifics of the general legal situation of those concerned.

Relations regulated by appropriate citizenship rules possess the general characteristic of all legal relations, namely that the parties behave in a strictly definite way. The legal relations emerging in connection with citizenship have a distinguishing feature which consists in the fact that one of the subjects of the relation is always the state.

Only an individual can be the other subject of such relations. Even when citizenship rules extend to a definite group of persons, the rules can only be realised if relations with the state on account of citizenship are entered into by each individual separately. Apart from that, unlike other political relations, citizenship relations most often involve not Soviet citizens but aliens and stateless persons who ask to be admitted to Soviet citizenship.

Lastly, the legal personality of an individual entering into a legal relation with reference to Soviet citizenship may also arise in minors.

Soviet legislation establishes the order in which Soviet citizenship may be changed. If both parents



change their citizenship (i.e. acquire or withdraw from it), the citizenship of their children under fourteen changes accordingly. However, change of citizenship in the case of children aged 14 to 18, whose parents change their citizenship, depends on the children's consent. Thus, the legal personality of individuals under the circumstances referred to is present from the age of fourteen years.

Legal relations with respect to citizenship are usually short-term. With the birth of a child to parents who are Soviet citizens is connected, for instance, the relation involving the recognition of the child as a Soviet citizen. Relations emerging with reference to the recognition of a person as a Soviet citizen are wholly reduced in this instance to the moment of recognition, i.e. the registration of the child at the registry office of the Executive Committee of the local Soviet.

As for the relation which emerges with respect to the acquisition of Soviet citizenship by an alien or a stateless person petitioning the Presidium of the Supreme Soviet of the USSR, it is exhausted and is consequently terminated from the moment when a decree is issued granting or refusing Soviet citizenship to the person concerned. Filing a petition in this case, asking to be granted Soviet citizenship rights, gives rise to a legal relation between the petitioner and the state. Accordingly, it devolves on the Presidium of the USSR Supreme Soviet to ascertain whether there is good reason for the petition and whether the information it contains is true, to consider the petition within the prescribed term, arrive at a decision in substance, and notify the petitioner of the decision.

In this case the main object of the rights and obligations of the parties to the legal relation are the actions of the supreme organ of state authority of the USSR or a Union republic, authorised to make decisions on matters connected with the acquisition or loss of Soviet citizenship.[1] Soviet citizenship rules determine thereby what authoritative functions those bodies may perform in respect of aliens,

[1] In most of the capitalist countries, legal regulation of matters connected with citizenship, as a rule, is in the competence of non-elective bodies. In Great Britain, for example, these functions are performed by the Home Office, and in the United States, by the courts.

Soviet citizens, and stateless persons with regard to citizenship. It is not by chance, therefore, that a whole range of Soviet citizenship rules are devoted specially to establishing the competence of the organs of government.

A certain place in legislation on citizenship belongs also to rules establishing the conditions and procedures of the reception and consideration of applications for admission to or withdrawal from citizenship, and settling questions of deprivation of Soviet citizenship.

When considering the conditions conducive to the emergence of legal relations concerning citizenship, the subjective will of the individual must be taken into account.

Here we come to a very interesting point. Indeed, do at least some rules we find in legislation on citizenship establish the subjective rights of Soviet citizens? This point is all the more interesting as some Soviet state-law experts share this view. Indeed, there is a relation between the citizenship rules and the subjective rights and duties which constitute the legal status of a Soviet citizen. Even so, those who claim that legislative rules on citizenship are directly related to the rules establishing the subjective rights are wrong.

We hold that in answering the question as to the "subjective character" of rules of law regulating citizenship relations one should start from the following basic premise. Citizenship as a definite legal relation between person and state is, to the person, merely an objective fact. It is the sovereign right of the Soviet state alone to decide whether or not a Soviet citizen may change his citizenship. Citizenship rules do not establish by dint of it any subjective rights, although certainly, on the basis of these rules and in the process of their application, there emerge powers for the person as the subject of a concrete legal relation concerning citizenship. Of course a Soviet citizen may enter into a relation with his country concerning his withdrawal from citizenship, submitting an application to the Presidium of the USSR Supreme Soviet. Nevertheless, in the legal relation arising from it the power of the subject of this relation, a Soviet citizen, consists merely in his right to apply for withdrawal from Soviet citizenship, but least of all in a right to demand the implementation of his "subjective right" to change citizenship.



Thus, what occurs at change of citizenship and in some other cases is not the exercise of some subjective right enjoyed by a citizen, but merely the emergence of a subjective power which a person possesses in the legal relation with the state, concerning, for example, change of citizenship. It would be wrong to regard these two notions as being on the same plane.

Although the rules regulating citizenship relations do not directly establish any subjective rights of Soviet citizens, they being the result and expression of socialist social relations, emerge as certain legal guarantees ensuring full and consistent implementation of the democratic rights and freedoms of Soviet citizens. In this is expressed, in particular, the actively creative nature of socialist legal rules, their certain independence with respect to the social relations regulated by them.

Although separate citizenship rules do not establish subjective rights of Soviet citizens, a necessary measure of a person's will is still an essential attribute of separate relations being regulated and, consequently, it tells also on the character of the Soviet citizenship rules themselves. Indeed, in the relation, for instance, concerning naturalisation of an alien or a stateless person in the Soviet Union, the will of the person who wants to acquire this citizenship naturally is an indispensable condition and the basis from which the legal relation itself springs. The state cannot enter on its own initiative into a relation concerning citizenship, without a corresponding expression of will on the part of a person. Equally, withdrawal from Soviet citizenship is only possible provided there is a definitely expressed will of a person applying for such withdrawal.

It is different when there arises, for instance, a relation concerning deprivation of citizenship. Relations of this kind no longer imply as their basis a definite expression of will on the part of the person being deprived of citizenship. The specific character of relations also determines the distinct methods by which they are regulated and tells in a definite way on the formation of the legal rules regulating relations concerning Soviet citizenship. In their turn, rules of law contain provisions determining the legal prerequisites or conditions of the emergence of legal relations of a given kind.

Citizenship rules as a specific area of state law are characterised by a special kind of legal facts singled out as the typical basis of the emergence, change or termination of a citizenship relation.

These facts may consist both in a person's actions and events of a definite kind, not depending on a person's will or desire. Thus, in establishing the citizenship of a person by reason of birth it is common to start from two main principles, viz. the principle of the soil (*jus soli*), or the principle of the blood (*jus sanguinis*). However, in a considerable majority of countries, the admission to citizenship by reason of birth is usually based on a more or less complex combination of the two principles. Soviet legislative practice on citizenship matters is no exception in this respect.

Every scientific systematisation of legal rules rests on the social relations which these rules are to regulate. Accordingly, in systematising the Soviet citizenship rules, we may single out three basic groups of rules regulating relations

(1) concerning admission to Soviet citizenship,

(2) concerning acquisition (establishment) of Soviet citizenship,

(3) concerning loss (termination) of Soviet citizenship.

The institution of Soviet citizenship is a sum-total of legal rules established by Soviet legislation, which has for the object of regulation relations arising between the Soviet state on the one hand, and aliens, Soviet citizens, and stateless persons on the other, concerning admission to, acquisition and termination of Soviet citizenship.

## Chapter 5

## ADMISSION TO CITIZENSHIP

Among the legal rules regulating relations concerning citizenship we must single out in the first place those which define the range of persons considered to be Soviet citizens and establish the terms on which these persons may be considered Soviet citizens, i.e. we must single out the rules regulating relations respecting the recognition of a person as a Soviet citizen.

In establishing the circle of its citizens by rules, the state furnishes conditions essential to a clear division between citizens on the one hand and aliens and stateless persons on the other. In its turn, such a division is a natural condition for any other decision on matters of citizenship.

The purpose of a legal rule is to shape the contents of a specific legal relation. The contents of the relation concerning the admission to Soviet citizenship emerges in the shape of definite, clearly stipulated conditions which must be present for one to be recognised as a Soviet citizen.

Broadly speaking, every relation arising between the state and a person concerning citizenship may be referred to relations concerning recognition of a person as a citizen. In this are reflected the particular features common to all relations concerning citizenship as in each case the state alone decides whether it should consider a concrete individual to be its citizen. Thus, an alien who applies for admission to Soviet citizenship thereby asks the state to recognise him as its citizen. On the other hand, withdrawal from citizenship signifies, in fact, a negative approach to the same matter because, in depriving a person of its citizen-

ship, the state defines by the same token its attitude to recognising him as its citizen.

Each of such relations has for its contents, and so for its end result, either acquisition or loss of Soviet citizenship.

One must quite definitely point out the close link existing between relations concerning admission to citizenship and those concerning the acquisition of citizenship. This is borne out by the fact that the norms regulating both relations are given in the same section, "Acquisition of USSR Citizenship", of the 1978 Citizenship of the USSR Act. And the so-called acquisition of citizenship "by birth", stipulated by the law, is nothing else but the establishment of definite conditions connected either with the parents' citizenship (*jus sanguinis*) or with the place of birth (*jus soli*), which are essential to the recognition of a person as a citizen of a given country.

The peculiar characteristics of the contents of relations concerning admission to Soviet citizenship depend both on the conduct of the parties and on the reasons for which these relations arise or cease. First of all, relations concerning admission to citizenship lack any special expression of the will of a person, directed at the acquisition or loss of citizenship. Both emerge already as the result of the above relations. The expression of the will of the person taking part in these relations is aimed precisely at admission to citizenship: it is as if the person requested the state to reaffirm his legal capacity to hold citizenship. Unlike this, a person who wants to be naturalised or to withdraw from citizenship has a different motivation, viz. a concrete desire either to acquire or withdraw from citizenship.

When citizenship is recognised there is consequently no need either to apply for naturalisation or for a special decision by a competent authority. A person's citizenship is recognised by the state by virtue of the existence of the legal fact indicated in the Act, and recognition is documented as a rule by the recognised person's registration, i.e. registration of a child at a registry office for births and marriages, or by the issuing of a passport to a citizen showing his or her citizenship, and so on.

Rules regulating the admission to citizenship were established already in the early legal measures of the Soviet state.



As the socialist federation was emerging, each Soviet republic strove to retain within its borders citizens of the nationality which gave its name to the republic. Along with employing legal means towards the consolidation of its own population within its borders, each of the independent Soviet republics established full legal equality of citizens of other republics with their own citizens.[1] In such circumstances, each republic freely allowed citizens of other Soviet republics to be recognised as its own citizens.

Soviet legislation of that period furnishes no uniform or circumstantial solution of the question as to the admission to Soviet citizenship. Each republic settled the matter proceeding from the specific historical conditions of its development. The legal rules defining the range of persons to be regarded as aliens furnished a supplement of a kind to this part of legislation.

In the measures adopted by the RSFSR, the rules regulating the recognition of a person as a citizen of the republic occur for the first time in the Interim Rules on the Order of Withdrawal from Russian Citizenship of Persons Residing on the Territory of the Russian Republic and Desirous of Being Admitted to Ukrainian Citizenship, and of the Registration of Russian Citizens Residing in the Territory of the Ukraine, approved by the People's Commissariat of Internal Affairs on September 10, 1918. Under the Interim Rules, all former subjects of the Russian Empire residing within its borders were considered to be affiliated to Russian citizenship until their withdrawal from it by the process stipulated by the Rules.[2]

In its turn, the Decree of the Ukrainian Government, issued on March 11, 1919, on withdrawal from citizenship recognised as citizens of the Ukrainian Soviet Republic all former subjects of the Ukrainian state and areas of the Russian Empire that had broken away from Russia, who resided in the Ukrainian Soviet Republic. Admission to Ukrainian republican citizenship was regulated in more detail by Paragraph 16 of the Rules on Aliens in the UkSSR and the

[1] This found expression, for instance, in the fact that the governments of the Soviet republics drafted for military service citizens of other Soviet republics as well as their own (see, for instance, *SU UkSSR*, 1919, Item 237).

[2] *SU RSFSR*, No. 68, 1918, Item 736.

Process of Acquisition and Loss of Ukrainian Citizenship.[1] Under the Rules, all persons born on the territory of the UkSSR, even to alien parents, were recognised as Ukrainian citizens, provided that on coming of age they made no declaration within the space of a year about their desire to acquire their parents' citizenship or, if the parents were of different citizenship, the citizenship of one of the parents.

Lastly, the Decree of the Council of People's Commissars of the Georgian SSR, issued on July 11, 1922, contained a number of articles dealing with the admission to Georgian citizenship. Under Art. 1 of the Decree, recognised as a citizen of the republic was every Georgian who had not acquired citizenship rights of another state as well as every citizen of the former Russian Empire who had resided on the territory of Georgia for five years immediately preceding the publication of the Decree and had some kind of occupation. According to Art. 3 of the Decree, recognised as Georgian citizens were also the children (adopted as well) of a Georgian citizen, his wife or widow; an alien's divorced or widowed wife who, by way of reintegration, made a declaration asking for restoration to Georgian citizenship of herself and her minor children; and minor children of aliens who had acquired Georgian citizenship.

Thus, in each of the acts enumerated above, the independent Soviet republics established rather different yardsticks of their own for admission to citizenship. Such a criss-cross pattern of legal regulation could not be justified when the rapidly developing federative relations among the independent Soviet republics increasingly determined the major aspects of the life of the entire Soviet people.

The 1924 Rules on Union Citizenship were the first to establish a uniform legal norm defining the grounds and conditions on which persons could be recognised as citizens of one of the Soviet socialist republics, and thereby of the USSR. By formulating this rule, Art. 3 of the Rules based admission to Soviet citizenship on one's residence in the territory of the USSR. Every person residing on the territory of the USSR was recognised as a Soviet citizen insofar as he had not proved that he was a foreign citizen. This allowed the automatic registering as Soviet citizens of persons who could not prove their affiliation to foreign citizenship.

[1] *SU UkSSR*, No. 14, 1922, Item 237.



In 1925-1927, a list of aliens residing on the territory of the USSR was made. During the registration considerable difficulties were encountered in establishing the citizenship of some persons. Taking advantage of certain gaps in the 1924 Rules, some persons, in particular those adopted by aliens, declared themselves "aliens". This made it necessary to issue in 1928 a resolution to the effect that should any children of Soviet citizens be adopted by aliens, the adoptees continue to be regarded as Soviet citizens.[1]

The 1930 and 1931 Rules on Citizenship of the USSR continued to recognise as a citizen of the USSR every person residing in the territory of the USSR, being different from the 1924 Rules only in that they put the onus of proving a person's foreign citizenship not on the person, but on the state. The 1930 and 1931 Rules substantially advanced the regulation of admission to Soviet citizenship by establishing a rule under which every citizen of the USSR was recognised as a citizen of the Union republic in whose territory he resided permanently. At the same time, if, by reason of nationality or origin, a Soviet citizen considered himself to be affined to another Union republic, he was entitled to choose the citizenship of that republic and was to be considered forthwith to be its citizen. In this case, recognition of one's republican citizenship was combined with option.

In regulating admission to Soviet citizenship Art. 2 of the 1938 Law on Citizenship of the USSR established the conditions on which recognised as Soviet citizens were

(a) all those who, up to November 7, 1917 had been subjects of the former Russian Empire and had not lost Soviet citizenship, and

(b) persons who had acquired Soviet citizenship by the statutory procedure.

For the first time in legal practice, this Law established the category of stateless persons. Under Art. 8, stateless

[1] *SZ SSSR*, No. 19, 1928, Item 162; *SU RSFSR*, No. 177, 1928, Item 735; *SU UkSSR*, No. 17, 1929, Item 162.

persons were those of the inhabitants of the USSR who, by dint of the law, were not citizens of the USSR and, simultaneously, had no means of proving their affiliation to a foreign state.

The rules previously in effect altogether excluded the possibility of statelessness for any person.

The basic significance of the rules established by the 1938 Citizenship Law was that they defined much more concretely the circle of persons affiliated to Soviet citizenship. Like similar legal rules previously in effect, the Law, in defining the circle of Soviet citizens, proceeded from the fact that the bulk of Soviet citizens consisted of the population of the former Russian empire which, with the exception of the population of the parts of the former state having seceded on the basis of the right of nations to self-determination, had retained actual contact with the new, Soviet state.

Clause 3 of the 1978 Citizenship Act, which defines who may be a Soviet citizen, recognises the following as citizens of the USSR:

(1) persons who were citizens of the USSR on the day the Act came into force;
(2) persons who have been naturalised in accordance with the Act.

The question of the category of stateless persons is highly intricate.

Statelessness arises from different causes. It may arise when a person loses his original citizenship under the ruling of a court or higher government bodies, without, however, simultaneously acquiring the citizenship rights of another country. For instance, in 1936-1938, the government of nazi Germany deprived wholesale the Jews who had fled from Germany of German citizenship. Most of them resided in countries which granted them asylum but did not admit them to citizenship. Many persons of Armenian nationality who lost citizenship before and after the First World War were in a similar position.

Apart from that, statelessness may arise as a result of discrepancy between the citizenship laws of different countries. Thus, loss of citizenship follows upon a woman marrying an alien if her country recognises the principle that the "wife follows the husband's citizenship" while the laws of the bridegroom's country do not grant citizenship to a foreign woman upon her marriage with its citizen. For example, a Liberian woman who marries a West German, under the laws of her country, automatically loses her Liberian citizenship, but does not acquire West German citizenship as, under the laws of the FRG, admission to citizenship does not automatically follow upon marriage with a West German citizen.

Statelessness may arise also upon the transfer of territory from one state to another, when the former deprives of citizenship the persons inhabiting the territory while the latter does not confer its citizenship upon them.

Statelessness may also arise for a person who has withdrawn at his own desire from citizenship of one state but has not, for some reason, been admitted to citizenship of another. Lastly, statelessness may arise for children of stateless parents.

To reduce the number of stateless persons is, doubtless, one of the objectives of legal regulation. Evidence of this is the Decision of the Presidium of the USSR Supreme Soviet, issued on December 16, 1954, On Persons Residing for a Long Time in the Territory of the USSR without Having Legalised Their Citizenship. As a result, the number of stateless persons sharply dropped.

In accordance with the decision, persons who were born abroad and, at one time or another, came to the USSR (with the exception of political immigrants) and who had failed to present papers on their affiliation to foreign citizenship, equally as their children, were considered to be citizens of the USSR.

The 1978 Citizenship Act makes a considerable advance toward reducing cases of statelessness, Clause 13 stating: "The child of stateless persons domiciled in the USSR, born on the territory of the USSR, is a citizen of the USSR."

The Act makes it completely impossible for any stateless person to be automatically counted as a Soviet citizen while, at the same time, facilitating a substantial reduction in the number of such persons.

Besides national legislation, questions of statelessness may be settled through bilateral or multilateral agreements between states.

Efforts to solve problems of statelessness by concluding multilateral international agreements were made even before World War II. In 1930, an international conference on conflicts of nationality laws was convened in the Hague under the sponsorship of the League of Nations. The conference worked out a Convention on certain questions relating to the conflict of nationality laws, and special protocols relating to statelessness and to one case of statelessness.

The Convention contained provisions aimed at eliminating the possibility of cases of statelessness springing up. It regulated, among other things, the citizenship of persons who had permission to expatriate (i.e. withdraw from citizenship and move to another country). Where the law stipulated the issue of an expatriation permit, such a permit did not entail the loss of the nationality of the State which issued it, unless the person to whom it was issued possessed another nationality or unless and until he acquired another nationality. An expatriation permit lapsed if the holder did not acquire a new nationality within the period fixed by the State which had issued the permit (Art. 7).

The Convention stipulated that if the national law of the wife caused her to lose her nationality on marriage with a foreigner, this consequence was to be conditional on her acquiring the nationality of the husband (Art. 8). Naturalisation of the husband during marriage was not to involve a change in the nationality of the wife, except with her consent (Art. 10). It was also stipulated that the wife who, under the law of her country, had lost her nationality on marriage was not to recover it after the dissolution of the marriage, except on her own application (Art. 11).

The Convention regulated the questions relating to the citizenship of children born of unknown or stateless parents, envisaged cases of preventing statelessness on adoption of children, and so on.

The Hague Convention and protocols were of certain positive significance for their time but had no success in practice. They were ratified by very few countries (Britain,



Chile, Australia, Holland, Brazil, Salvador and some others).

The Soviet Union did not join the Convention and protocols.

After World War II, questions concerning citizenship were dealt with by the International Law Commission of the United Nations Organisation. As early as 1949, the Commission included in its codification work questions relating to the elimination of statelessness. In 1954, it adopted a Draft Convention on the Elimination of Future Statelessness and a Draft Convention on the Reduction of Future Statelessness.[1]

Both draft conventions establish the principle of acquisition of citizenship according to the *jus soli* by a person who would otherwise have no citizenship. A person born on the territory of a state not participating in the Convention may acquire citizenship of one of the parents, preferably the father (*jus sanguinis*). In accordance with the draft conventions, if the law of a country entails loss of citizenship as a consequence of any change in the personal status of an individual, such as marriage, termination of marriage, legitimation, recognition or adoption, such loss is made conditional upon acquisition of citizenship of another state. The drafts allow renunciation of nationality and forbid the state to deprive their citizens of nationality if it would render them stateless. The drafts regulate the question as to the citizenship of persons residing in territories transferred by one state to another. It is stipulated, in particular, that transfer of territory should not entail loss of citizenship for its inhabitants.

The draft conventions suggest that a body should be set up within the framework of the United Nations, with which stateless persons could lodge their complaints in connection with refusal by a state to grant them citizenship. Such complaints were to be submitted by the said body to the consideration of a special tribunal.

On the question of eliminating the existing statelessness, the Commission did not deem it possible to propose any

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[1] "Draft Report of the Commission Covering the Work of Its Sixth Session", 3 June-28 July 1954. *Yearbook of the International Law Commission*, Vol. 1, N.Y., 1959, p. 171.

measures towards its complete and immediate resolution. In the Commission's opinion, the existing number of stateless persons may be reduced only by means of conferring upon stateless persons citizenship of the country of their abode. To improve the situation of stateless persons it was also desirable that, pending the acquisition of citizenship, such persons should be granted by the countries of their abode a special status of "protected persons" which would enable them to enjoy all civil rights, except the political rights and the right to diplomatic protection by the government of the country of their abode. The protector state would then be able to impose on them the same duties as on its own citizens.

The draft conventions of the UN International Law Commission were discussed by the 9th Session of the UN General Assembly which expressed its desire "that an international conference of plenipotentiaries be convened to conclude a convention for the reduction or elimination of future statelessness as soon as at least twenty States have communicated to the Secretary-General their willingness to co-operate in such a conference".[1] This conference was convened by the UN Secretary-General in March 1959 at Geneva. However, owing to sharp contradictions which were revealed in the process of discussion, no convention was evolved, the conference merely resolving to ask the United Nations to reconvene it in order to continue and finish its work.

As a result of the discussion held at the 2nd session of the conference in August 1961 at New York,[2] a Convention on the Reduction of Statelessness[3] was worked out and opened for signature.

The substance of the Convention is as follows.

1. The Convention binds each Contracting State to grant its nationality to a person born in its territory who would otherwise be stateless (*jus soli*). Such nationality should

[1] *Resolutions Adopted by the General Assembly during Its Ninth Session from 21 September to 17 December 1954*, N.Y., pp. 49-50.

[2] The Soviet' Union did not attend either the 1st or 2nd sessions of the conference.

[3] *United Nations General Assembly. United Nations Conference on the Elimination or Reduction of Future Statelessness.* A/Conf. 9/1-A/Conf. 9/SR/24, 61-20834, pp. 1-11.



be granted at birth, by operation of law or upon an application being lodged with the appropriate authority, by or on behalf of the person concerned, in the manner prescribed by the national law. In the latter instance, a State may make the grant of its nationality subject to certain conditions such as, first, that the application is lodged during a definite period beginning not later than at the age of eighteen years and ending not earlier than at the age of twenty-one years; second, that the person concerned has habitually resided in the territory of the Contracting State for a fixed period not exceeding five years immediately preceding the lodging of the application nor ten years in all; third, that the person concerned has neither been convicted of an offence against national security nor has been sentenced to imprisonment for a term of five years or more on a criminal charge; fourth, that the person concerned has always been stateless (Art. 1).

A child born in wedlock in the territory of a Contracting State, whose mother has nationality of that state, acquires at birth that nationality if it otherwise would be stateless.

2. Concerning nationality of persons born abroad, the Convention states that a Contracting State shall grant its nationality to a person who would otherwise be stateless and who is unable to acquire nationality of the Contracting State in whose territory he was born. However, the grant of nationality may be made subject to the conditions that the application is lodged before the applicant reaches an age, being not less than twenty-three years, fixed by the Contracting State; that the person concerned has habitually resided in the territory of the Contracting State for such period immediately preceding the lodging of the application, not exceeding three years, as may be fixed by that State (Art. 1).

3. A foundling found in the territory of a Contracting State shall, in the absence of proof to the contrary, be considered to have been born within that territory of parents possessing the nationality of that State (Art. 2). It is also specified that birth on a ship or in an aircraft shall be deemed to have taken place in the territory of the State whose flag the ship flies or in which the aircraft is registered (Art. 3).

4. A Contracting State shall grant its nationality to a person, born in its territory, if the nationality of one of his parents at the time of the person's birth was that of that State. If his parents did not possess the same nationality at the time of his birth, the question whether the nationality of the person concerned should follow that of the father or that of the mother shall be determined by the national law of such Contracting State. In the cases referred to nationality shall be granted at birth, by operation of law, or upon an application being lodged with the appropriate authority, by or on behalf of the person concerned, in the manner prescribed by the national law (Art. 4).

5. Concerning the question of the influence of marriage on a woman's nationality, the Convention stipulates that if the law of a Contracting State entails loss of nationality as a consequence of marriage or termination of marriage, such loss shall be conditional upon possession or acquisition of another nationality (Art. 5).

6. The Convention permits renunciation of nationality in principle with the proviso that such renunciation shall not result in loss of nationality unless the person concerned possesses or acquires another nationality.

Nationals of Contracting States who seek naturalisation in a foreign country shall not lose their nationality unless they acquire or are accorded assurance of acquiring the nationality of that foreign country (Art. 7).

7. The Convention rejects the principle of deprivation of nationality stipulating that a Contracting State "shall not deprive a person of its nationality if such deprivation would render him stateless". A person may be deprived of nationality only where it has been obtained by misrepresentation or fraud or on account of residence abroad longer than the period specified by the laws of the State concerned.

At the time of signature, ratification or accession to the Convention, a Contracting State may retain the right to deprive a person of his nationality on one or more of the following grounds if they are stipulated by its national law: if the person has rendered or continues to render services to, or receive emoluments from, another State; or has conducted himself in a manner seriously prejudicial to the vital interests of the State; or has taken an oath, or made



a formal declaration, of allegiance to another State (Art. 8).

A Contracting State may not deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds.

8. Regulating admission to nationality in the case of transfer of territory from one State to another, the Convention stipulates that every international treaty providing for the transfer of territory shall include provisions designed to secure that no person shall become stateless as a result of the transfer. In the absence of such provisions a Contracting State to which territory is transferred, or which otherwise acquires territory, shall confer its nationality on such persons as would otherwise become stateless as a result of the transfer or acquisition (Art. 10).

9. Under certain conditions, the Convention considers it desirable that a special body be set up within the UN framework to consider individual complaints on matters of nationality. According to the Convention, the Contracting States "shall promote the establishment within the framework of the United Nations, as soon as may be after the deposit of the sixth instrument of ratification or accession, of a body to which a person claiming the benefit of this Convention may apply for the examination of his claim and for assistance in presenting it to the appropriate authority" (Art. 11).

As is clear from the contents of the Convention, some of its provisions were in the nature of attempts to regulate questions which it is in the exclusive competence of a State to settle. In particular, the Convention prescribes that a State should confer its nationality on any person born in its territory and even abroad; lays down rules under which no one may be deprived of nationality; allows the possibility for a person to appeal against refusal by a State to grant nationality, and so on.

The 1961 Convention on the Reduction of Statelessness, which came into effect on December 13, 1975, has been ratified by six countries. The Soviet Union did not accede to the Convention.

Another document prepared by the United Nations is the Convention on the Nationality of Married Women which was adopted by a UN conference on February 20, 1957,

in New York.[1] The Convention was prepared by the UN Commission on the Rights of Women with the assistance of democratic women's organisations. This certainly left its imprint on the Convention investing its provisions with a progressive character. The Convention is designed to eliminate the discrimination of women with relation to citizenship. As its preamble states, conflicts of law concerning women's nationality arise out of provisions on the loss and acquisition of nationality by women as a result of marriage, of its dissolution, or of the change of nationality by the husband during marriage.

To prevent loss of citizenship by a woman in the aforementioned circumstances, the Convention of February 20, 1957 stipulates that each Contracting State agrees that neither the celebration nor the dissolution of a marriage between one of its nationals and an alien, nor the change of nationality by the husband during marriage, shall automatically affect the nationality of the wife (Art. 1); that neither the voluntary acquisition of the nationality of another state nor the renunciation of its nationality by one of its nationals shall prevent the retention of its nationality by the wife of such national (Art. 2).

The Convention suggests a privileged procedure of the acquisition of her husband's nationality by the wife, viz. that each Contracting State agrees that the alien wife of one of its nationals may, at her request, acquire the nationality of her husband through specially privileged naturalisation procedures. The grant of such nationality may be subject to such limitations as may be imposed in the interests of national security or public policy (Art. 3).

The Convention on the Nationality of Married Women of 1957 has been acceded to by 48 countries (as of January 1, 1975), including the USSR, the Ukraine, Byelorussia, Cuba, Yugoslavia, Poland, Rumania, Czechoslovakia, Hungary, Bulgaria and Sri Lanka.

In Soviet law, the definition of stateless persons is contained in the 1978 USSR Citizenship Act. Under Clause 9 of the Act persons resident in the USSR who do not have USSR citizenship, and are without evidence of citizenship of another country, are recognised as stateless persons.

[1] *Yearbook on Human Rights for 1957*, N.Y., 1959, p. 301.



The legal status of stateless persons in the USSR as well as in the other socialist countries is entirely different from that in the capitalist countries. Stateless persons in the USSR enjoy civil legal capacity. The Fundamentals of Civil Legislation of the USSR and the Union Republics stipulate that "stateless persons resident in the USSR shall enjoy civil legal capacity equally with Soviet citizens. Exemptions may be established by law of the USSR" (Art. 123).[1]

Stateless persons residing in the USSR are covered by the Soviet labour and social security laws and their family rights are equal with those enjoyed by Soviet citizens. Apart from that, under Art. 60 of the Fundamentals of Civil Procedure of the USSR and the Union Republics,[2] stateless persons residing in the USSR have the right to apply to the court and enjoy civil procedural rights equally with Soviet citizens.

There are not so many stateless persons residing in the USSR. The reason why this is so is that most persons of foreign descent habitually residing in the USSR have acquired Soviet citizenship and have become equal citizens of the Soviet Union.

The Soviet state, which considers statelessness to be undesirable, seeks to eliminate its causes through legislation and by international agreements.

After World War II, the Soviet Government was approached by Armenians from different countries who asked to be permitted to return to their native country, Soviet Armenia. The Government of the USSR willingly granted these requests which came, as a rule, from stateless persons. In connection with their arrival in the USSR, the question of their citizenship arose. On October 19, 1946, the Presidium of the Supreme Soviet of the USSR issued a Decree on the Procedure of the Acquisition of Soviet Citizenship by Persons of Armenian Nationality Returning from Abroad to Their Motherland, Soviet Armenia.[3] Under the Decree,

[1] See *Fundamentals of Legislation of the USSR and the Union Republics*, Progress Publishers, Moscow, 1974, p. 201.
[2] *Ibid.*, p. 229.
[3] *Vedomosti Verkhovnogo Sovieta SSSR*, No. 39, 1946.

such persons were considered Soviet citizens from the moment of their arrival in the USSR.

In this way, a large group of Armenians who had been stateless acquired Soviet citizenship.

Similar decrees were issued in connection with the return to the Soviet Union from abroad of persons of other nationalities as well.

After World War II, the Soviet Union concluded repatriation agreements with a number of countries. These agreements always included provisions on citizenship, devised to prevent either statelessness or dual citizenship among repatriated persons. For example, the agreement concluded on March 25, 1957 between the USSR and the Polish People's Republic concerning the time-limits and procedure of repatriation from the USSR of persons of Polish nationality stipulated that the Poles repatriated under the agreement were, from the moment of their departure from the USSR, considered to have withdrawn from Soviet citizenship and acquired Polish citizenship on arrival in the Polish People's Republic. Members of repatriates' families who were not of Polish nationality and possessed Soviet citizenship retained it or withdrew from it in accordance with their desire expressed at the registration of the exit papers. Persons who had withdrawn from Soviet citizenship acquired Polish citizenship on arrival in the Polish People's Republic (Art. 10).[1]

The USSR and Czechoslovakia concluded in 1945 a Treaty on the Transcarpathian Ukraine under which, in accordance with the desire of the population of the Transcarpathian Ukraine and on the basis of a friendly agreement between the Parties, the Transcarpathian Ukraine was reunified with its old native land and incorporated in the Ukrainian Soviet Socialist Republic. It was stipulated in the protocol appended to the Treaty that persons of Slovak or Czech nationality residing permanently on the territory of the Transcarpathian Ukraine should have the right to opt for citizenship in the Czechoslovak Republic. Persons of Ukrainian and Russian nationality residing on the territory of the Czechoslovak Republic were to have the right to opt for citizenship of the USSR. Option was to take place in

[1] *Vedomosti Verkhovnogo Sovieta SSSR*, No. 16, 1957, Item 418.



accordance with existing legislation of the Czechoslovak Republic and the USSR and it could become valid only with the consent of Czechoslovak and Soviet authorities respectively. Persons taking advantage of the right of option were to resettle in the state whose citizenship they had intended to acquire.[1]

All the other persons residing permanently on the territory of the Transcarpathian Ukraine including those of Slovak or Czech nationality who would not use the right of opting for Czechoslovak citizenship became Soviet citizens (it goes without saying that citizens of third countries residing in the Transcarpathian Ukraine retained their status of aliens).

Thus, the Parties not only made it possible for the said persons to move from one country to the other, but also to acquire, in accordance with their choice, either Soviet or Czechoslovak citizenship; no one became stateless as a result of the reunification of the Transcarpathian Ukraine with the Ukrainian SSR.

In considering the matter concerning admission to Soviet citizenship, special attention should be paid to so-called dual citizenship as, in principle, possession of citizenship of one or several countries simultaneously bears an immediate relation to recognition or non-recognition of a person's being in such a situation by the state whose citizenship the person holds and on whose territory he resides.

Soviet laws utterly reject dual citizenship. As early as 1918, Art. 6 of the Decree on Naturalisation, issued on April 1 by the All-Russia Central Executive Committee, stipulated that the aliens admitted to Russian citizenship shall notify thereof the states whose citizenship rights they had held.[2]

The Decree on Naturalisation, issued by the Council of People's Commissars of the RSFSR in 1921, contained

[1] *Sbornik deistvuyushchikh dogovorov, soglashenii i konventsii, zaklyuchonnykh SSSR s inostrannymi gosudarstvami* (Collected Treaties, Agreements and Conventions in Force Concluded by the USSR with Foreign States), Issue XI, Gospolitizdat, Moscow, 1955, pp. 31-33.

[2] *SU RSFSR*, No. 31, 1918, p. 405.

a more clearly worded provision that persons residing in the RSFSR who were admitted to Russian citizenship and who failed to end their citizenship relations with the foreign state forfeited the right to turn for protection of their interests to the government of the country whose citizenship rights they had held (Point 8).[1]

The 1924 Rules on Union Citizenship (Art. 11) and the Soviet Citizenship Rules of 1930 (Art. 4) and 1931 (Art. 4) stipulated that foreign citizens admitted to citizenship of the USSR were neither to enjoy the rights nor discharge the obligations connected with affiliation to citizenship of another state.

Formally, however, the aforementioned Rules did not contain any special rule forbidding a person to hold, apart from Soviet citizenship, also citizenship of one or more foreign countries. Besides, Art. 11 and Art. 4 of these Rules referred only to naturalised persons.

The 1938 Soviet Citizenship Law contained no rule at all in any way defining the attitude to dual citizenship.

As is laid down by Clause 8 of the Citizenship of the USSR Act, 1978, entitled "Non-recognition of dual citizenship for a citizen of the USSR", a person who is a citizen of the USSR is not recognised as having citizenship of a foreign country.

The chief source of dual (or plural) citizenship are, as a rule, numerous conflicts between the national citizenship laws of individual states.

The Soviet state quite definitely expressed its non-recognition of dual citizenship in principle by concluding a series of international conventions with socialist countries so as to settle the question concerning citizenship of persons with dual citizenship.

Such conventions were concluded by the Soviet Union with the Federal People's Republic of Yugoslavia (May 22, 1956),[1] the Hungarian People's Republic (August 24, 1957),[2] the Rumanian People's Republic (September 4, 1957),[3] the People's Republic of Albania (September 18, 1957),[4] the Czechoslovak Republic (October 5, 1957),[5] the People's Republic of Bulgaria (December 12, 1957),[6] the Democratic People's Republic of Korea (December 16, 1957),[7] the Polish People's Republic (January 21, 1958),[8] and the Mongolian People's Republic (August 25, 1958).[9] The USSR and the GDR concluded a Treaty on the Settlement of the Question Concerning Citizenship of Persons with Dual Citizenship on April 11, 1969.[10]

These normative international Agreements (Conventions) were concluded by the USSR for the purpose of eliminating existing cases of dual citizenship, and have played a great role in the Soviet state's legal practice of admission to Soviet citizenship.

The basic rule established by the Conventions is that persons residing on the territory of one of the Contracting States whom both of these states consider, on the strength of their laws, to be their citizens, may choose citizenship of either of the Contracting States.[11]

The right afforded by the Conventions to elect one of

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[1] *SU RSFSR*, No. 62, 1921, p. 437.
Under the circular of the People's Commissariat of Foreign Affairs of the RSFSR of December 8, 1921, aliens who, under the national laws of their native country, did not lose their former citizenship upon transfer to Russian citizenship, were to append to their applications a paper certifying that their Government did not object to the transfer.

[1] *Vedomosti Verkhovnogo Sovieta SSSR*, No. 16, 1956.
[2] *Ibid.*, No. 1, 1958.
[3] *Ibid.*, No. 5, 1958.
[4] *Ibid.*, No. 9, 1958.
[5] *Ibid.*, No. 17, 1958.
[6] *Ibid.*, No. 7, 1958.
[7] *Ibid.*, No. 4, 1958.
[8] *Ibid.*, No. 9, 1958.
[9] *Ibid.*, No. 35, 1958.
[10] The Treaty was ratified by the Presidium of the Supreme Soviet of the USSR on December 10, 1969 (*Vedomosti Verkhovnogo Sovieta SSSR*, No. 51, 1969).
[11] The Convention concluded between the USSR and Yugoslavia on May 22, 1956 also had this provision, not contained in the other Conventions: "The present Convention shall not be applied to persons who, having the citizenship of one Contracting Party, have acquired the citizenship of the other Contracting Party, not having received permission to withdraw from citizenship which they held previously, on condition that such persons permanently reside on the territory of that Contracting Party whose citizenship they had previously. Both Contracting Parties will consider such persons to be citizens of that Contracting Party on whose territory they reside permanently" (Part 2, Art. 1).

the two citizenships of the Contracting States was carried out in this way: persons having dual citizenship whom each of the Contracting States considered to be its citizens, residing on the territory of one of the Contracting States and wishing to elect the citizenship of the other Contracting State, were given a year during which they were to submit written declarations to the Embassy of the state whose citizens they wished to be. Election of citizenship was to be carried out on the basis of complete voluntariness.

The mechanism of admission to citizenship under the Conventions was this:

first, a person who submits an application about his choice of citizenship is, upon his application being granted, considered to be a citizen solely of the state of his choice;

second, if the state to which the application about the election of citizenship is addressed does not recognise the applicant as its citizen, the applicant is regarded as not having lodged any application;

third, a person having dual citizenship of the Contracting States who fails to submit an application stating his choice of citizenship of one of the states within the time prescribed (one year from the date the Convention enters into force) is considered to be a citizen solely of the Contracting State on whose territory he permanently resides;

fourth, if a person elects the citizenship of the Contracting State in which he does not reside and has his application granted but wishes to continue in his old residence, he acquires the status of an alien there, whereby the rules applying to other aliens extend to him as well.[1]

Fundamental significance attaches to the following rules stipulated by the Conventions.

1. Applications concerning election of citizenship may be submitted only by persons who have attained eighteen years of age or younger persons who are married.

2. Minor children follow the citizenship of their parents if both parents, in accordance with the Convention, have the same citizenship.

3. If one parent has or elects the citizenship of one Contracting State and the second, the citizenship of the other Contracting State, the citizenship of their minor children having dual citizenship is determined by agreement of the parents.[1] In the absence of such agreement, the children retain the citizenship of that Contracting State on whose territory they permanently reside.[2]

4. Minor children one of whose parents resides on the territory of one Contracting State and the other, on the territory of the other Contracting State, retain the citizenship of the parent in whose upbringing they are found, unless there is an agreement to the contrary between the parents.

5. Minor children whose parents are deceased or whose whereabouts is unknown remain citizens of that Contracting Party on whose territory they reside on the day of the ending of the annual period from the time the Convention enters into force.[3]

6. Minors who have reached fourteen years of age may, by submitting a declaration, elect the citizenship of one

[1] The Convention between the USSR and Yugoslavia also mentions that with relation to such persons the freedom of repatriation was not to be limited.



[1] The Convention concluded between the USSR and Hungary stipulates that such agreement must be expressed in a special declaration (Art. 4, 2). This matter is also dealt with in the Convention between the Government of the USSR and the Government of the Hungarian People's Republic Concerning the Prevention of Dual Citizenship, concluded on January 21, 1963 (*Vedomosti Verkhovnogo Sovieta SSSR*, No. 30, 1963).

The Convention between the USSR and Mongolia requires agreement of the parents, which must be expressed in writing and attested by state registry agencies (Art. 5, 2).

The Convention between the USSR and Yugoslavia does not stipulate any agreement of the parents.

[2] The Convention between the USSR and Hungary stipulates that in the absence of agreement of the parents their minor children shall retain the citizenship of that state on whose territory they reside at the time of taking the decision concerning the citizenship of the parents (Art. 4, 2).

Under the Convention between the USSR and Czechoslovakia, children in that case retain the citizenship of that state on whose territory they reside on the day of the ending of the annual period from the time the Convention enters into force (Art. 4).

The Convention between the USSR and Bulgaria states that under the aforementioned circumstances minor children retain the citizenship of that state where they or their parents had a permanent residence before departing abroad (Art. 4, 2).

[3] The Convention between the USSR and Yugoslavia states that "children not having parents shall retain the citizenship of the Contracting State on whose territory they reside permanently".

Contracting Party if they wish that the provisions on minors should not apply with respect to them.[1]

The settlement of questions relating to the citizenship of persons having dual citizenship is a highly important matter. But it cannot be considered sufficient in itself, unless one takes steps to prevent the occurrence of dual citizenship. That was what made it necessary to conclude special agreements towards that end.

In 1963, a Convention Concerning the Prevention of Dual Citizenship was concluded between the USSR and the Hungarian People's Republic[2]; in 1966, between the USSR and the Polish People's Republic[3]; and in 1967, between the USSR and the People's Republic of Bulgaria.[4]

The first Convention—between the USSR and Hungary—deals with two categories of persons, viz.:

1) children one of whose parents is a citizen of one Contracting State, and the second, a citizen of the other Contracting State;

2) persons who are citizens of one Contracting State and who wish to be admitted to the citizenship of the other Contracting State.

The selection itself of these categories indicates the main sources from which dual citizenship springs.

In settling the question as to the citizenship of children whose parents are citizens of different countries, international agreements stipulate that parents may by joint agreement elect the citizenship of one Contracting State for the children. The following variants are stipulated:

(a) if the parents elect for a child the citizenship of that Contracting State on whose territory they reside, they may submit an application in writing to the competent agencies of this State within one year from the date of birth of the child. In the event the parents do not submit such an application, the child is considered a citizen solely of that Contracting State on whose territory it resides on the day the period for submitting applications expires;

[1] This rule is absent from the Conventions between the USSR and Hungary and between the USSR and Mongolia. Apart from that, the Convention between the USSR and Yugoslavia stipulates that the age should be sixteen years, not fourteen.

[2] *Vedomosti Verkhovnogo Sovieta SSSR*, No. 30, 1963.

[3] *Ibid.*, No. 15, 1966.

[4] *Ibid.*, No. 7, 1967.



(b) if the parents elect for a child the citizenship of the Contracting State on whose territory they do not reside, they must, within one year of the date of birth of the child, submit an application in writing to the diplomatic or consular representation of the other Contracting State. In the event the parents do not submit the application, the child will be considered a citizen solely of that Contracting State on whose territory it resides on the day the period for submitting applications expires;

(c) parents may elect citizenship for children who were born after the expiry of the period established for submitting applications. For this purpose, the parents shall submit an application in writing to the competent agencies within one year from the day the Convention enters into force. In the event the parents do not submit the application, the children, in accordance with the general rule, will be considered citizens solely of that Contracting State on whose territory they reside on the day the period for submitting applications expires;

(d) a child whose parents reside separately, in the absence of an agreement between the parents, shall follow the citizenship of the parent who is bringing it up on the day of the expiry of the period established for submitting applications on general terms;

(e) if parents reside on the territory of a third state they may submit an application thereof concerning election of citizenship for a child to the diplomatic or consular representation of that State whose citizenship is being elected within the period provided for. In the absence of an agreement between the parents, a child shall be considered a citizen of that Contracting State on whose territory the parents had their permanent residence before departing to the third state. If the parents had no such residence, the child shall follow the citizenship solely of the mother.

The Conventions regulate the conditions of children's admission to citizenship also in the event they have no parents:

(a) a child, one of whose parents is deceased or his whereabouts unknown on the date of the expiry of the period established for submitting applications, shall follow the citizenship solely of the other parent;

(b) a child whose parents are deceased or their where-

abouts unknown, is considered a citizen of that Contracting State on whose territory it resides on the day the period for submitting applications expires.

The Conventions stipulate that each Contracting Party will not admit to its citizenship persons who are citizens of the other Contracting Party without the consent of the competent agencies of the latter.

As was mentioned above, one of the most common instances of admission to citizenship is so-called admission by reason of birth. Its salient characteristic is that it depends on two principal points, viz. the parents' citizenship and the place of birth. Usually, both coincide.

Admission to Soviet citizenship by reason of birth was regulated in detail by the 1924 Rules on Union Citizenship.

Article 4 of the Rules established the following norms of law:

(a) persons whose parents were citizens of the USSR were considered to be citizens of Union republics and thereby of the USSR, wherever these persons might be born;

(b) a person one of whose parents was at the time of that person's birth a citizen of the USSR was considered a citizen of a Union republic and thereby of the USSR, provided that at least one of the parents at the time of birth resided on the territory of the USSR;

(c) in the event one of the parents at the time of a person's birth was a citizen of the USSR, both parents residing at the time outside the USSR, the citizenship of that person was determined by joint agreement of the parents.

Upon attaining majority such person could be admitted to Soviet citizenship through a privileged procedure.

Thus, if in the first-mentioned case admission to Soviet citizenship was dependent on both parents being Soviet citizens, in the second case it was dependent not only on at least one parent being a Soviet citizen, but also on a territorial point (at least one parent residing on the territory of the USSR at the time of a person's birth).

The third case, proceeding from the absence of the territorial principle (both parents residing abroad) as well as from the fact that only one parent is a Soviet citizen, exemplifies admission to citizenship which may follow only provided that there is an agreement between the parents, i.e. which depends, in the long run, on such agreement.



Undeniably, the conditions of admission to Soviet citizenship by reason of birth, stipulated by the 1924 Rules, were highly involved.

The 1930 and 1931 Rules on Citizenship of the USSR, when defining these conditions, took as a basis the first instance of admission to citizenship, as stipulated in the 1924 Rules, with the important difference that if at the time of a person's birth at least one parent was a Soviet citizen, that was enough for that person to be considered a Soviet citizen.

The territorial principle was completely removed with respect to admission to Soviet citizenship by reason of birth. The place of birth did not matter—it might be in the Soviet Union or abroad. The essential thing was the Soviet citizenship of both parents or of at least one parent. This rule did not even stipulate any agreement of the parents, should they possess different citizenships.

The question of admission to Soviet citizenship by reason of birth was not settled by the 1938 Law on Citizenship of the USSR either. This Law contained no mention of the fact, for instance, that children whose parents were Soviet citizens were considered to be Soviet citizens by reason of birth.

Rules stipulating the conditions of the admission of a child to Soviet citizenship by reason of birth were included in the Codes of the Union Republics on Marriage, the Family, and Guardianship and were subsequently also included in the Fundamentals of Legislation of the USSR and the Union Republics on Marriage and the Family (Art. 30), adopted on July 27, 1968.[1]

Legislation has fixed the commonly accepted and actually existing state of things whereby a person is unquestionably considered to be a Soviet citizen if at the time of his birth both parents are Soviet citizens, irrespective of the place of birth.

A person one of whose parents is not a Soviet citizen is no longer considered to be a Soviet citizen solely by reason of his birth on the territory of the USSR. The Act, sim-

[1] See *Fundamentals of Legislation of the USSR and the Union Republics*, p. 351.

ilarly as the agreements between the USSR and other socialist states concerning dual citizenship, makes Soviet citizenship dependent on the place where the parents of a child resided permanently at the time of its birth.

The Act also gives legal force to the rule invariably followed in practice that if one of the parents is not a Soviet citizen, under certain conditions agreement of parents is decisive.

The Citizenship of the USSR Act, 1978 (Clause 11) lays it down that a child both of whose parents are citizens of the USSR at the time of its birth is a citizen of the USSR irrespective of whether it was born inside the USSR or beyond its borders.

When there is a difference in the citizenship of the parents, one of whom was a citizen of the USSR at the time of the child's birth, the child is recognised as a citizen of the USSR in the two following cases:

(1) if it was born in the USSR; and
(2) if it was born outside the USSR, but one or both of the parents were domiciled in the USSR at the time.

When there is a difference in the citizenship of the parents, one of whom was a citizen of the USSR at the time of a child's birth, the citizenship of said child, born outside the USSR, is decided by agreement of the parents if at the time both parents were domiciled outside the USSR.

When there is a difference in the citizenship of the parents, one of whom was a citizen of the USSR at the time of the child's birth and the other a stateless person, or else unknown, the child is recognised as a citizen of the USSR irrespective of its birthplace (Clause 12).

A child living in the USSR, both of whose parents are unknown, is recognised as a citizen of the USSR (Clause 14) by virtue of the presumption that it was born to Soviet citizens.

In settling the question concerning the citizenship of minor persons one of whose parents is not a Soviet citizen, the Soviet state legalised from the outset the equal rights of the father and the mother, taking the agreement of parents as the basis of the legal regulation of the citizenship of such children.

Article 147 of the Code of Registry, Marriage, Family, and Guardianship Laws of the RSFSR (1918) introduced the rule that if parents were not of the same citizenship, one



of them being a citizen of the RSFSR, the citizenship of their children was determined by a preliminary agreement of the parents submitted to the state registry offices. In the absence of such agreement, the children were considered to be Russian citizens and were entitled, on reaching majority, to elect the citizenship of the other parent (for boys the minimum age was set at eighteen, and for girls at sixteen).[1]

The Decree of the Council of People's Commissars of the RSFSR, issued on August 22, 1921, established the procedure of children's admission to citizenship in the event their parents changed citizenship. If both parents acquired Soviet citizenship, their children, until they attained eighteen years of age, followed the citizenship of the parents; if parents had not the same citizenship, their children, until the age of fourteen, retained their previous citizenship in the absence of an agreement to the contrary between the parents; upon attaining fourteen years of age such children could declare their wish to acquire the citizenship of one of the parents.[1]

One must note that Soviet legislation did not at that time regulate admission to citizenship of children if their parents withdrew from Soviet citizenship, as the question concerning the conditions and procedure of withdrawal from Soviet citizenship was not yet settled in the laws of the republics.

The 1924 Rules (Art. 6 and the note to it) contained

[1] Under paragraph 31 of the Rules issued by the Ukrainian Central Executive Committee on March 28, 1922, if parents were not of the same citizenship, when Ukrainian citizenship was acquired by one of the foreign parents their children retained their previous citizenship until they attained eighteen years of age (not fourteen, as was the case in the RSFSR) in the absence of any agreement between the parents (*SU UkSSR*, No. 14, 1922, Item 237).

Under the Rules concerning aliens in the Byelorussian SSR, the citizenship of children who were born on the territory of Byelorussia of foreign parents was determined by the citizenship of the parents. If parents were not of the same citizenship, the citizenship of their children, in accordance with the general rule, was determined by a preliminary agreement between the parents stated by them at the conclusion of the marriage. In the absence of such agreement, the children were considered citizens of Byelorussia, on the understanding, however, that upon attaining majority they could declare their wish to follow the citizenship of one of the parents (*SU BSSR*, No. 12, 1922, Item 148).

detailed regulations concerning admission to Soviet citizenship of a person whose parents changed their citizenship.[1] The following basic points were singled out, which, in turn, fell into separate cases, viz.:

*Point 1*—change of citizenship by a parent who previously had Soviet citizenship. This falls into two cases:

(a) parents reside on the territory of the USSR (Part 1, Art. 6)—change of citizenship by one of the parents who previously were Soviet citizens did not affect the citizenship of their children;

(b) parents reside outside the territory of the USSR (Part 2, Art. 6)—change of citizenship by one of the parents who were previously citizens of the USSR already had certain legal consequences for their children, viz. their admission to citizenship depended wholly on an agreement between the parents.

*Point 2*—change of citizenship by both parents, when they either acquire or lose Soviet citizenship (Note 1 to Art. 6). In this instance, children younger than fourteen followed the citizenship of their parents. Children having attained fourteen years of age retained their previous citizenship.

The 1930 and 1931 Rules had a somewhat different approach to the regulation of the citizenship of children whose parents changed their own citizenship. The rules set by them were as follows:

(a) if both parents had acquired or withdrawn from Soviet citizenship, their children who were under fourteen years of age followed the parents' new citizenship; transfer to Soviet citizenship of children aged from fourteen to majority (i.e. till eighteen years of age) together with their parents required the children's consent;

(b) if only one parent acquired Soviet citizenship, the minor children living with that parent acquired the same citizenship upon an application submitted by the parent. Admission to Soviet citizenship of children who had attained fourteen years required their consent. Children under fourteen living with the foreign parent, after the decease of the

[1] The contents of Art . 6 of the 1924 Union Citizenship Rules were reproduced in the republican Codes on Marriage, the Family, and Guardianship.



parent who had Soviet citizenship or in the event of all contact having been lost between the latter and his children, followed the citizenship of the foreign parent who was to submit an application expressly for the purpose. If one parent was deceased or had lost all contact with the children, and the other parent had withdrawn from Soviet citizenship, the children under fourteen acquired the citizenship of the latter parent who was to submit an application to that effect.

The 1938 Soviet Citizenship Law provided for a much more exact, if less differentiated, regulation of Soviet citizenship with respect to children whose parents changed citizenship. Art. 6 of the Law took as a basis the situation in which both parents changed citizenship, i.e. either both became citizens of the USSR or both withdrew from Soviet citizenship. Soviet citizenship of children was, in this case, regulated in the following way:

(a) children who had not attained fourteen years of age followed the citizenship of their parents; they were considered to be Soviet citizens only if both parents had acquired Soviet citizenship;

(b) if both parents changed citizenship, the citizenship of their children from fourteen to eighteen, i.e. to majority, could follow theirs only with the consent of the children;

(c) in all other instances change of citizenship of children who had not attained eighteen years of age could follow solely in accordance with the general practice.

A whole clause of the USSR Citizenship Act of 1978 (Clause 4) is devoted to the question, what is the recognised citizenship of children either when their parents' citizenship is changed, or in case of adoption.

The Act establishes (Clause 20) that when there is a change in the citizenship of parents as a consequence of which both either become citizens of the USSR or lose such citizenship, the citizenship of their children under 14 years of age shall be correspondingly altered.

The matter of recognition of children's citizenship is decided differently when the citizenship of one parent only is altered. The main variants in this case may be taken as follows:

(1) when one of the parents has acquired citizenship of the USSR;

(2) when one of the parents renounces citizenship of the USSR.

The conditions and procedure for recognising the children as citizens of the USSR, when one parent becomes naturalised, is governed by Clause 21 of the USSR Citizenship Act. This clause lays it down that:

(i) if one of the parents becomes a citizen of the USSR and the other remains a foreign citizen, the child is not automatically recognised as a citizen of the USSR but may become naturalised on application of the parent who has acquired such citizenship;

(ii) if one of the parents becomes a USSR citizen and the other remains a stateless person, the child is recognised as a USSR citizen if it is resident in the USSR;

(iii) if one of the parents becomes a citizen of the USSR and the other remains a stateless person, a child not resident in the USSR is not automatically recognised as a citizen of the USSR; in this case it may acquire USSR citizenship on the application of the parent who has acquired USSR citizenship.

Clause 22 in turn provides that, when one parent relinquishes USSR citizenship and the other retains such, the child will retain citizenship of the USSR. Relations bearing on the recognition of Soviet citizenship also bear on marriage between a Soviet citizen and an alien, and on dissolution of said marriage. Art. 103 of the Code of Laws on the Registration of Acts of Civil Status of the RSFSR issued in 1917-1918 set down this rule: "In the event of a marriage being contracted between persons not of the same citizenship, and if one of the parties holds Russian citizenship, change of citizenship may follow only upon a specially expressed desire of bridegroom or bride in accordance with the general practice." This legalised a major democratic principle of Soviet law, that of equality of the spouses, of man and woman.[1] At the same time, this rule established the right of persons concluding a marriage to elect citizenship at

[1] I. Altanov, a Bulgarian jurist, notes that legislation of the Soviet republics, which settles the question concerning change of citizenship by a woman marrying an alien in full conformity with her own wishes, has essentially influenced legal practice in other countries, e.g. in France, which had to replace their previous discriminatory rules. See *Mezhdunarodno-chastnopravnata sistema na Narodnota Republika Bulgaria*, p. 205.



their own discretion, for which purpose a specially expressed desire of bridegroom or bride was required.[1]

The 1924 Rules, however, already changed the conditions and procedure for admission to Soviet citizenship of persons concluding marriage who had not the same citizenship. The principle of option of citizenship was replaced by another, which was essentially different, and was subsequently retained in all Soviet citizenship laws—the principle that each person entering into matrimony retained his or her citizenship.

Article 5 of the 1924 Rules, which replaced the previous practice of admission to Soviet citizenship, established at the same time a privileged procedure of change of citizenship, i.e. acquisition or loss of Soviet citizenship by those concluding a marriage in the event they had not the same citizenship.

These rules of law were included in status quo in the 1930 and 1931 Rules.

The 1938 Law on Citizenship of the USSR secured the said principle in Art. 5.

The Citizenship of the USSR Act, 1978 (Clause 4) establishes that marriage of a citizen (male or female) of the USSR to a person who is a foreign citizen or a stateless person, and also the dissolution of such a marriage, does not entail changes in the citizenship of the spouses.[2] Soviet citizenship is consequently recognised in all cases for citizens of the USSR (male or female) who have contracted a marriage with an alien or stateless person; Soviet citizens also retain Soviet citizenship in the case of the other

[1] These matters were dealt with in more detail by Circular No. 263 of the People's Commissariat of Internal Affairs of the RSFSR, issued on July 21, 1921. In the interests of women and so as to ensure their legal equality, the Circular stipulated that the bride desiring to acquire the fiancé's citizenship was to declare her wish at the conclusion of the marriage. The declaration was entered in the book for the registration of marriages. Upon the conclusion of marriage the file together with the declaration were sent to the People's Commissariat of Internal Affairs for consideration. A person entering into matrimony could also submit an application concerning withdrawal from citizenship of the RSFSR on general terms. A Circular of the People's Commissariat of Internal Affairs, issued on July 7, 1921, allowed restoration to Soviet citizenship of a woman divorced from her foreign husband or widowed after the decease of her foreign husband.

[2] In accordance with the Fundamentals of the Legislation of the USSR and Union Republics on Marriage and the Family, marriages of Soviet citizens to aliens, and equally marriages of aliens to one ano-

spouse's relinquishing of citizenship of the USSR or being deprived of it. On the other hand, acquisition of citizenship of the USSR by one of the spouses cannot serve as grounds for recognition of Soviet citizenship for the other spouse as well.

The USSR Citizenship Act, 1978 (Clause 4) lays down the following rule: "Naturalisation of one of the spouses as a citizen of the USSR, or loss of USSR citizenship, shall not entail a change of the citizenship of the other spouse."

In some capitalist countries, limitation of the legal capacity of a married woman is a major legal principle, which has found expression in citizenship law as well.

The Soviet Union has invariably come out as a champion of democratic principles of legislation on citizenship in international terms too. On September 21, 1921, the Soviet Government submitted to the consideration of the League of Nations a proposal to give general recognition to the rule in accordance with which marriage of a woman with an alien should not entail for her an automatic change of citizenship. Owing to the stand taken by delegates from the capitalist countries, no common decision was passed on that important matter.

The Soviet Union signed in 1957 an International Convention on the Nationality of Married Women, ratified by the Presidium of the Supreme Soviet of the USSR on August 28, 1958,[1] which contained, to repeat, rules of a progressive nature. In accordance with these rules, neither the dissolution of a marriage nor the change of citizenship by the husband during marriage should automatically affect the

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ther, are contracted in the USSR like marriages between Soviet citizens (Article 31). Marriages of Soviet citizens to aliens performed abroad according to the ceremony established locally for their completion, are recognised as valid in the USSR if there are no obstacles to such recognition stemming from Articles 10 and 15 of said Fundamentals (attainment of marriageable age; the inadmissibility of marriage between persons who are already married, or between persons related by direct line of descent, etc.).

Marriages of Soviet citizens to aliens are dissolved on the general grounds prevailing in the USSR. The dissolution of marriages between Soviet citizens and aliens contracted outside the USSR under the laws of the country concerned is recognised as valid in the USSR, if, at the time of the divorce, one of the spouses was resident outside the USSR (Article 33).

[1] *Vedomosti Verkhovnogo Sovieta SSSR*, No. 28, 1958, Item 373



citizenship of the wife. The Convention stipulates that the wife may, at her request, acquire the citizenship of her husband through naturalisation procedures.

Questions of the recognition of children's citizenship of the USSR may arise in cases of their adoption. The 1978 Citizenship Act, in providing for this contingency, assumes two basic cases, devoting a special clause to each of them:

(a) adoption of a child who is a foreign citizen or a stateless person by citizens of the USSR or by a married couple one of whom is a citizen of the USSR (Clause 23);

(b) adoption of a child who is a citizen of the USSR by foreign citizens or stateless persons, or by a married couple one of whom is a citizen of the USSR (Clause 24).

In the first case the Act presumes the following variants:

(i) a child who is a foreign citizen or a stateless person, adopted by citizens of the USSR, is recognised as a citizen of the USSR;

(ii) a child who is a foreign citizen, adopted by a married couple one of whom is a citizen of the USSR and the other a stateless person, is recognised as a citizen of the USSR;

(iii) a child who is a stateless person, adopted by a married couple one of whom is a citizen of the USSR, is recognised as a citizen of the USSR;

(iv) a child who is a foreign citizen, adopted by a married couple one of whom is a citizen of the USSR and the other a foreign citizen, may become a citizen of the USSR by agreement of the adopters.

In the second case the Act presumes the following solutions:

(i) a child who is a citizen of the USSR, adopted by foreign citizens or by persons one of whom is a citizen of the USSR and the other a foreign citizen, retains citizenship of the USSR; in addition, this child may be ruled by the Presidium of the USSR Supreme Soviet, on the application of the adopters, to have relinquished citizenship of the USSR;

(ii) a child who is a citizen of the USSR, adopted by stateless persons or by a couple one of whom is a citizen of the USSR and the other a stateless person, retains citizenship of the USSR.

The Fundamentals of the Legislation of the USSR and Union Republics on Marriage and the Family (Article 34) indicate that for aliens to adopt a child who is a Soviet citi-

zen but resident outside the USSR, it is necessary to obtain the sanction of the competent authority of the Union republic concerned. The adoption of a child who is a Soviet citizen is also recognised as valid if it is sanctioned by the authorities of the country on whose territory the child is living, on condition that permission for such adoption has been obtained in advance from the competent authority of the Union republic concerned. The rules for the adoption of children who are Soviet citizens by aliens on the territory of the USSR are laid down by the legislation of Union republics.

Decrees of th ePresidium of the Supreme Soviet of the USSR, issued at different times, regulated admission to Soviet citizenship of certain categories of persons. They included decrees On the Procedure of the Acquisition of Citizenship of the USSR by Citizens of the Lithuanian, Latvian and Estonian Soviet Socialist Republics of September 7, 1940; On Restoration to Citizenship of the USSR of Inhabitants of Bessarabia and the Acquisition of Soviet Citizenship by Inhabitants of Northern Bukovina of March 8, 1941; On the Procedure of the Acquisition of Citizenship of the USSR by Persons of Lithuanian Nationality, Indigenous Inhabitants of the City of Klaipeda and the Klaipeda, Šilutė and Pagėgiai Districts of the Lithuanian SSR of December 16, 1947; On the Procedure of the Acquisition of Citizenship of the USSR by Citizens of the Lithuanian, Latvian and Estonian Republics and Natives of Bessarabia Residing in Countries of Latin America of March 30, 1948.[1]

It should be borne in mind that while the purpose of the Decrees was to provide for the acquisition of or restoration to Soviet citizenship of certain categories of persons (which is clear from the titles), the acquisition of or restoration to citizenship was effected through admission to Soviet citizenship of persons meeting the requirements stated in the Decrees. Simultaneously, the Decrees contained rules defining the conditions of acquisition of Soviet citizenship through general procedures.

Admission to Soviet citizenship was also regulated by the Decree of the Presidium of the Supreme Soviet of the

[1] *Vedomosti Verkhovnogo Sovieta SSSR*, No. 31, 1940; No. 13, 1941; No. 1, 1948; No. 28, 1948.



USSR, On the Procedure of the Acquisition of Soviet Citizenship by Persons of Armenian Nationality Returning from Abroad to Their Motherland, Soviet Armenia, and by the Decree on Withdrawal from Soviet Citizenship of Persons of Czech and Slovak Nationality Resettling from the USSR to Czechoslovakia and the Acquisition of Soviet Citizenship by Persons of Russian, Ukrainian and Byelorussian Nationality Resettling from Czechoslovakia to the USSR.[1]

[1] *Vedomosti Verkhovnogo Sovieta SSSR*, No. 40, 1946.

## Chapter 6

### ACQUISITION OF CITIZENSHIP

Acquisition of Soviet citizenship, as was noted above, constitutes a fully independent group of relations regulated by rules of law. It is characteristic of these relations that they utterly depend on the subjective intention of a person, aimed at establishing relations with a state, concerning the acquisition of citizenship of that state. This group of relations—and, accordingly, the rules to which they are subject—may be subdivided into

1. relations concerning *naturalisation*, and
2. relations concerning *restoration to citizenship*.

The first acts of the Soviet state which established the naturalisation procedures were the Decree of the All-Russia Central Executive Committee, issued on April 1, 1918,[1] and the Decree of the Council of People's Commissars of the RSFSR, issued on August 22, 1921.[2]

The rules governing the acquisition of Soviet citizenship emerged and developed on the basis of Art. 20 of the Constitution of the RSFSR. Under this article, local Soviets were empowered to grant, without any cumbersome formalities, Russian citizenship rights to aliens residing on the territory of the Russian Republic for purposes of employment, and belonging to the working class or to the peasantry not employing the labour of others.

The Decree of the ARCEC on the Acquisition of Russian Citizenship Rights of April 1, 1918, stipulated the following major conditions of the acquisition of Soviet citizenship by naturalisation:

(a) Every alien residing on the territory of the RSFSR could acquire the rights of Russian citizenship. An alien wishing to become a naturalised Russian citizen had to apply to the local Soviet stating his occupation and indicating whether he had been prosecuted by a court of law on a criminal charge, and if so, for what offence. The identity of the applicant, should there be no other way of ascertaining it, was attested to by full citizens of the RSFSR. Having satisfied itself that the applicant conformed to the requirements, the Soviet issued him an appropriate naturalisation certificate.

(b) In exceptional cases, the Decree allowed the rights of Russian citizenship to be conferred on aliens staying outside the RSFSR. Applications of such aliens, addressed to the Chairman of the All-Russia Central Executive Committee, were handed in by them directly or through the nearest diplomatic representative of the RSFSR, and were considered by the Chairman in substance.

The Decree did not stipulate different naturalisation rules depending on the social status of aliens wishing to acquire Soviet citizenship rights. Such differentiation was, however, required in view of the circumstances in which the young socialist state was developing, and followed directly from the stipulations and the spirit of the Constitution.

The Decree on Naturalisation issued by the RSFSR Council of People's Commissars on August 22, 1921 settled a number of questions concerning admission to Soviet citizenship. First of all, the Decree altered the procedures of admission to Soviet citizenship of aliens on the territory of the Russian Republic, who did not belong to the working classes. Such persons were to apply not to local Soviets but to regional (*gubernia*) Executive Committees. Aliens who belonged to the working class or to the peasantry not employing the labour of others could, as before, be granted Soviet citizenship rights by local Soviets.

Aliens residing abroad could be granted citizenship rights only by the All-Russia Central Executive Committee, the supreme organ of state power in the Republic. Persons on whom such rights were conferred pledged themselves

[1] *SU RSFSR*, No. 31, 1918, Item 405.
[2] *Ibid.*, No. 62, 1921, Item 437.

to respect and protect from any encroachments the state system of the RSFSR established under the Constitution.

The Decree of the CPC contained an essential provision. It laid down that refusal to admit to citizenship of the RSFSR was final and without appeal (Art. 5).

The naturalisation rules established under the 1921 Decree of the Council of People's Commissars of the RSFSR were adopted by other republics as well. The Rules of the Ukrainian Central Executive Committee Concerning Aliens in the UkSSR and the Procedures of the Acquisition and Loss of Ukrainian Citizenship,[1] like the laws of the RSFSR, differentiated the procedures of admission to Ukrainian citizenship, depending on the social status of the applicants. Privileged procedures were established for the naturalisation of aliens belonging to the working classes. Upon attaining majority, all such aliens could apply for admission to Ukrainian citizenship.

Applications of aliens residing in the Ukraine were considered by regional Executive Committees while the applications submitted by aliens residing abroad fell within the competence of the Ukrainian Central Executive Committee. Aliens naturalised in the Ukraine made a written declaration promising to respect and protect from all encroachments the state structure of the Ukrainian Republic established under the Constitution. Persons admitted to Ukrainian citizenship were issued residence permits.

Similar acts were passed in other republics as well.[2]

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[1] *SU UkSSR*, No. 14, 1922, Item 237. The Rules replaced a whole range of laws previously in effect, viz. the Decree of the Workers' and Peasants' Government of the Ukraine (WPGU) Concerning the Rights and Duties of Aliens (*Sobranie uzakonenii i rasporyazhenii RKPU* [Collected Statutes and Decisions of the WPGU], No. 9, February 1, 1919), the Decree of the Council of People's Commissars of the Ukraine on the Extradition of Aliens (*Ibid.*, No. 14, March 2, 1919), decisions of the CPC of the UkSSR on the Acquisition of Ukrainian Citizenship Rights, Decrees of the CPC Concerning the Departure from and Entry into the Ukraine (*Ibid.*, No. 24, July 1, 1919).

[2] See the Decree of the CPC of the Georgian SSR of July 12, 1922, On Citizenship of the Georgian SSR, which replaced Decree No. 29 of the Revolutionary Committee of Georgia, issued on April 6, 1921, On the Acquisition of the Citizenship Rights of Georgia by Foreign Subjects, which was similar in content to the Decree of the All-Russia CEC of April 5, 1918 (*Pravda Gruzii*, No. 410, August 13, 1922); Decision No. 17 of the CPC of the Azerbaijan SSR, On the Acquisition of the Azerbaijan Citizenship Rights (*Bakinsky Rabochy*, No. 144, July 1, 1923).



The naturalisation procedures established by that time formed the basis of the respective articles of the 1924 Union Citizenship Rules. Simultaneously, much more complex procedures were introduced. That was due to the needs of the developing federal state as well as to the prevailing political situation at home and abroad. The 1924 Union Citizenship Rules stipulated two different sets of procedures for the naturalisation of principal categories of aliens.

1. Admission to Soviet citizenship of *aliens residing on the territory of the USSR.*

This category of aliens was further subdivided into two groups, with different naturalisation procedures for each, viz.

(a) aliens residing in the USSR for purposes of employment and belonging to the working class or to the peasantry not employing the labour of others, as well as those subjected to persecution for their public activity and seeking asylum,[1] were admitted to Soviet citizenship through specially privileged procedures—by regional and similar Executive Committees. In the Autonomous republics not divided into regions, aliens in this group were naturalised by the Central Executive Committees of such republics[2];

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[1] Emigrant workers made up a large proportion of aliens who resided in the USSR at that time. During the period of peaceful development following the Civil War, the Soviet Government and Lenin personally gave immense attention to every form of industrial assistance from abroad, including immigration into the USSR of expert workers in industry and agriculture. Soviet Government decisions and Lenin's instructions concerning immigration indicate that the object was not only to use foreign workers for the rehabilitation of the economy, but also to provide employment for jobless foreign workers. Simultaneously, the movement for resettlement in the Soviet Union reflected the ever growing desire of workers in the capitalist countries to assist the Soviet people in building socialism. In 1922-1926, the Labour and Defence Council Standing Commission for Immigration received ninety collective applications from 411,523 workers and peasants from many countries. The total of the immigrants the Commission sent to jobs in industry and agriculture in 1922-1927 amounted to 10,676. See *Novaya i noveishaya istoriya* (Modern and Recent History), No. 5, 1961, pp. 107, 111.

[2] In accordance with this rule, in the RSFSR, for instance, a Decree was issued on February 1, 1926, On the Admission of Aliens to Citizenship of the USSR (*SU RSFSR*, No. 11, 1926, Item 85) and

(b) all other aliens residing on the territory of the USSR were naturalised by the Central Executive Committees of the republics in which they resided.

2. Admission to Soviet citizenship of *aliens residing abroad*. Here, too, two groups were distinguished:

(a) aliens who wished to settle in the USSR as agricultural or industrial immigrants, as well as repatriates, re-emigrants and persons returning to the USSR under treaties with foreign states, were admitted to Soviet citizenship in accordance with the procedures to be established by specially enacted Union laws with the stipulation that the sovereignty of the Union republics be ensured;

(b) all other aliens residing beyond the boundaries of the USSR were admitted to Soviet citizenship through consular or other agencies performing similar functions, representing the Soviet Union abroad by decisions of the Central Executive Committees of the Union republics at the request of the representative of the People's Commissariat of Foreign Affairs attached to the Council of People's Commissars of the given Union republic, and by decisions of the Central Executive Committee of the USSR at the request of the People's Commissariat of Foreign Affairs.

The practice of admission to Soviet citizenship at that time put forward a difficult question which urgently demanded solution. It concerned repeated applications for admission to Soviet citizenship. Suffice it to say that of the 9,492 applications submitted in 1928 to the Central Executive Committee of the USSR, 702 or 7.2 per cent were submitted for a second time. Many applications were submitted for a second time also to the Central Executive Committees of Union republics. The 1924 Union Citizenship Rules containing no regulations on that score, provisions had to be made additionally. On January 2, 1928, the Presidium of the All-Russia Central Executive Committee resolved: "It shall be established that applications for admission to citizenship of the RSFSR may be submitted for a second time by persons whose applications were rejected by the Presidium of the ARCEC, not earlier than a year since such refusal." A similar resolution was passed on January 28, 1928, by the Presidium of the Central Executive Committee of the USSR.

The Union republics enjoyed broad powers of naturalisation. At the same time, the right of the USSR to admit to Soviet citizenship was obviously limited. Suffice it to say that 1924 Union Citizenship Rules stipulated no right for the Central Executive Committee of the USSR to admit to Soviet citizenship aliens residing on the territory of the USSR.

The competence of the USSR in the matter of naturalisation was substantially extended under the 1930 and 1931 Rules on Citizenship of the USSR. These acts, which simplified the general system of naturalisation, contained some essential new points.

First of all, admission to Soviet citizenship of aliens residing on the territory of the USSR came under the joint jurisdiction of the USSR and the Union republics as represented by their Central Executive Committees. Foreign citizens could acquire Soviet citizenship by applying either to the Presidium of the Central Executive Committee of the USSR which passed a special decision on the matter, or to the Presidium of the CEC of the Union republic in which they resided. In the latter case, citizenship of the Union republic, and thereby citizenship of the USSR, was conferred also by a special decision.[1] The 1930 and 1931 Rules contained new provisions entitling the person whose application for naturalisation had been rejected by the Presidium of the Central Executive Committee of a Union republic to complain to the Presidium of the Central Executive Committee of the USSR.

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a decision was passed by the All-Russia Central Executive Committee and the Council of People's Commissars on July 23, 1927, On the Revision of the Rights and Duties of the Local Bodies of Soviet Government (*SU RSFSR*, No. 79, 1927, Item 533), both of which stipulated that the foreign workers could be naturalised by decision of a regional or other Executive Committee having similar jurisdiction. It was also stipulated that other, non-worker aliens and re-emigrants could be naturalized by a decision of the All-Russia Central Executive Committee.

[1] Whereas the 1930 Rules mentioned only admission to citizenship of the USSR, the 1931 Rules already spoke of admission to citizenship of a Union republic, and thereby to citizenship of the USSR. This emphasised the significance of uniform Soviet federal citizenship.

The 1931 Rules on Citizenship of the USSR contained also an exceedingly important stipulation concerning admission to Soviet citizenship. It was that aliens submitting an application for admission to citizenship of the USSR and *simultaneously* to citizenship of one of the Union republics were to specify *which Union republic exactly* they wished to be citizens of. By this was established the uniformity of Soviet federal and republican citizenship. In acquiring Soviet citizenship, an alien was also obliged to elect concrete republican citizenship, without which he could not, properly speaking, acquire citizenship of the USSR.

Besides general naturalisation procedures, the 1930 and 1931 Rules also stipulated specially privileged procedures for aliens residing on the territory of the USSR.

Such privileged procedures applied to foreign workers and peasants residing in the USSR for purposes of employment as well as to aliens granted the right of asylum because of persecution to which they were subjected for their revolutionary and liberation activities. Privileged procedures also applied in cases involving change of citizenship in connection with the conclusion of a marriage.

Soviet citizenship acquired through privileged procedures was conferred by decision of the territorial or regional Executive Committee, the Central Executive Committee of a Union republic, or the Executive Committee of an Autonomous republic.[1] Moreover, the Central Executive Committee of a Union republic could authorise district Executive Committees and town Soviets in towns having the status of independent administrative-economic units to deal with applications for admission to Soviet citizenship in a privileged procedure.

Nevertheless, all government agencies empowered under the 1930 and 1931 Rules on Citizenship of the USSR to admit aliens to Soviet citizenship through privileged procedures could also reject applications. In that case, the

[1] The Central Executive Committee and the Council of People's Commissars of the USSR passed on November 23, 1930 a Decision on Privileged Procedures for Admission to and Withdrawal from Citizenship of the USSR which allowed district Executive Committees and town Soviets to naturalise aliens residing in the USSR as well as give them permission to withdraw from Soviet citizenship (*SZ SSSR* No. 58, 1930, Item 614).



applicants could, in accordance with the general procedure, ask the Central Executive Committee of the USSR or the Central Executive Committee of the Union republic in which they resided to grant them Soviet citizenship rights (the 1931 Rules).

The 1930 and 1931 Rules also dealt with the admission to Soviet citizenship of aliens residing abroad. Under the 1930 Rules, citizenship in that case could be conferred only by the Presidium of the Central Executive Committee of the USSR. The 1931 Rules introduced an essential change in this procedure too, stipulating that foreign citizens residing abroad were admitted to citizenship of *one of the Union republics and thereby to citizenship of the USSR by a decision of the Central Executive Committee of the USSR* or, if the application was sent to the Presidium of the Central Executive Committee of a Union republic, by a decision of that Presidium.

A category of aliens—those residing abroad and granted the right of asylum on account of suffering persecution for revolutionary and liberation activities as well as those changing their citizenship by matrimonial reasons—could, under the 1930 and 1931 Rules, acquire Soviet citizenship through privileged procedures. They were admitted to citizenship by a decision of an authorised representative of the USSR.

Authorised representatives of the USSR abroad, who dealt with the aforementioned questions, could refuse to extend the privileged procedures to applicants and advise them to lodge an application with the Presidium of the Central Executive Committee of the USSR or of the respective Union republic in the normal way.

The rules of naturalisation in the Soviet Union were substantially modified by the 1938 Law on Citizenship of the USSR.

In accordance with the Law, aliens of whatever nationality and race were admitted to citizenship of the USSR, upon application, by the Presidium of the Supreme Soviet of the USSR or of the Union republic in which they resided (Art. 3).

The Law did not specially subdivide aliens applying for admission to Soviet citizenship into those residing on the territory of the USSR and those residing abroad. At the same time, there was a difference in the rules governing the

naturalisation of these two groups. An alien residing on the territory of the USSR could lodge an application either with the Presidium of the Supreme Soviet of the USSR or with the Presidium of the Supreme Soviet of the Union republic where he resided, while an alien residing abroad could apply for admission to Soviet citizenship solely to the Presidium of the Supreme Soviet of the USSR.

Article 6 of the 1938 Law, which regulated admission to citizenship of children whose parents changed citizenship both either acquiring or withdrawing form Soviet citizenship, stated that the citizenship of children under eighteen years of age, whose parents were citizens of different countries, could be changed only following the regular procedure. Thus, if Soviet citizenship was acquired by one parent, the children under eighteen could acquire the said citizenship only if granted permission by the Presidium of the Supreme Soviet of the USSR or the Presidium of the Supreme Soviet of a Union Republic in each individual case. The question of the citizenship of minor children in the event one parent withdrew from Soviet citizenship was settled likewise.

In accordance with the new Citizenship Act aliens and stateless persons residing in the USSR are granted the right to appeal to the Presidium of the USSR Supreme Soviet for naturalisation as citizens of the USSR in cases when the Presidium has previously ruled on their citizenship.

Aliens and stateless persons resident abroad may apply for naturalisation as Soviet citizens to the Presidium of the USSR Supreme Soviet, in this case the application is forwarded to the Presidium through the appropriate diplomatic or consular representatives of the USSR. Naturalisation of aliens or stateless persons is granted at their request in accordance with the USSR Citizenship Act irrespective of race and nationality, sex, education, language, and place of residence (Clause 15).

Naturalisation is granted by the promulgation for each individual case of a Decree of the Presidium of the USSR Supreme Soviet or of the Presidium of the Supreme Soviet of a Union Republic.

Rejection of an application for naturalisation is made in the form of a resolution of the Presidium of the USSR Supreme Soviet.



A person is considered naturalised as a citizen of the USSR on the day of promulgation of the Decree of the Presidium of the USSR Supreme Soviet or of the Presidium of the Supreme Soviet of a Union Republic, unless otherwise stated in the Decree.

The Act provides that the procedure for examining applications and representations on matters of citizenship, and the preparation and issuing of documents on these matters, and the granting of naturalisation is defined by the Presidium of the USSR Supreme Soviet, and on questions of citizenship coming within the competence of a Union Republic by the Presidium of the Supreme Soviet of the Union Republic concerned (Clause 28).

Admission to Soviet citizenship is registered by the enactment in each particular case of a decree of the Presidium of the Supreme Soviet of the USSR or of the Presidium of the Supreme Soviet of a given Union republic.

Preparations for the consideration of applications concerning admission to citizenship of the USSR are carried out in the Legal Department of the Presidium of the Supreme Soviet of the USSR. The Consular Department of the Ministry of Foreign Affairs of the USSR usually submits its opinion concerning the admission of aliens to citizenship of the USSR as well as keeps in touch with applicants residing abroad. Taken into consideration are the reasons whereby the application is lodged, the presence of relatives in the USSR, and so on. The Presidium of the Supreme Soviet of the USSR forms a commission which subjects questions of citizenship to preliminary consideration and submits its opinion on each application.

As was noted already, the rules establishing the procedures for the acquisition of Soviet citizenship upon application are contained also in decrees of the Presidium of the Supreme Soviet of the USSR issued at various times. Thus, the Decree on the Procedure for the Acquisition of Citizenship of the USSR by Citizens of the Lithuanian, Latvian and Estonian Soviet Socialist Republics, issued on September 7, 1940, stipulated that citizens of these republics residing beyond the boundaries of the USSR on the day the Decree was issued, who were not deprived of citizenship by the Soviet governments of the said republics but, at the same time, had not been registered as Soviet citizens at

Soviet embassies or consulates before November 1, 1940, could be admitted to Soviet citizenship on general terms, in accordance with Art. 3 of the 1938 Law on Citizenship of the USSR. The Decree also extended the possibility of acquiring Soviet citizenship through regular procedures upon application also to stateless persons residing permanently on the territory of the Lithuanian, Latvian and Estonian Union Republics and not belonging to any of the minority peoples which had been barred from citizenship under the political regimes that had existed in Lithuania, Latvia and Estonia before the establishment of Soviet government there. Treated as stateless were also persons deprived of Soviet citizenship under the Decree of the All-Russia Central Executive Committee and the Council of People's Commissars of the RSFSR of December 15, 1921 and residing on the territory of the Lithuanian, Latvian and Estonian SSRs on the day the Decree was issued. Such persons, too, could be admitted to Soviet citizenship in accordance with Art. 3 of the Law on Citizenship of the USSR.

Acquisition of Soviet citizenship involves no cumbersome or onerous obligations, no racial or national privileges or restrictions for those wishing to acquire it.

Nor do Soviet laws permit any curtailment of the rights of naturalised persons, compared with other Soviet citizens.

The laws of other socialist countries also make possible acquisition of citizenship by reason of birth or through naturalisation. In Yugoslavia, citizenship can also be granted under international treaties.

In the countries referred to, a citizen is a person

(a) whose parents are citizens of the given country, irrespective of the place of birth;

(b) one of whose parents is a citizen of the given country while the other is unknown or stateless or his citizenship unknown (Bulgaria, Poland, Yugoslavia);

(c) who is born in the territory of the given country, if one of his parents is a citizen of that country while the other parent is an alien (Bulgaria,[1] Yugoslavia);

[1] A person is also a Bulgarian citizen who is born abroad, except when born in the country of the foreign parent where the national law considers him to be its citizen.



(d) one of whose parents at least is a citizen of the given country, irrespective of the place of birth (Hungary, the GDR, Poland, Rumania, Yugoslavia).

Thus, in Hungary, national citizenship rights are conferred also on a person one of whose parents is not a Hungarian citizen while the parental rights of the other parent (a Hungarian citizen) have been established through confession or a court ruling. A person having acquired Hungarian citizenship in accordance with this provision may, upon attaining majority, lodge an application with competent agencies, stating his desire to change his citizenship.

In Poland, parents may, by applying to a competent agency within three months since the birth of a child, elect for the child citizenship of a foreign state if, in accordance with the national law of the foreign parent, the child acquires citizenship of that state at birth. In the event parents fail to come to an agreement, the question of the citizenship of a child may be settled by order of the court. A child who has acquired foreign citizenship by reason of the parents' choice or by decision of the court may, within six months after attaining sixteen years of age, submit an application to a competent agency, asking to be considered a Polish citizen.

In Yugoslavia, a child born abroad and one of whose parents is a Yugoslav citizen, acquires Yugoslav citizenship if, before it is eighteen, the parents lodge an appropriate application with competent agencies or if it resides permanently in Yugoslavia. These requirements may be dispensed with, should the child prove to be a stateless person.

A citizen by reason of birth may be:

(a) a person born in the territory of a given country to foreign parents, when he does not acquire foreign citizenship by reason of origin (Bulgaria, the GDR) or until his foreign citizenship should be proved (Hungary);

(b) a person born in the territory of a given country to stateless parents or parents whose citizenship has not been established or is unknown (Bulgaria, Poland, Yugoslavia);

(c) a person born or found in the territory of a given country, whose parents are unknown (Bulgaria,[1] Hungary,[2] the GDR, Poland, Rumania, Yugoslavia).

[1] Bulgarian citizenship is granted also when one parent is unknown.

[2] Citizenship is granted to a child of unknown parents if the child was or is being brought up in Hungary.

In Czechoslovakia, a child whose parents are citizens of one of the republics acquires at birth the parents' citizenship. The citizenship of a child whose parents are not citizens of the same republic is determined by the place of his birth. A child born abroad to parents who are not citizens of the same republic acquires the mother's citizenship. Change of citizenship is allowed by agreement of parents. A child one of whose parents is an alien acquires at birth citizenship of that republic whose citizen the other parent is. The citizenship of a child found is determined depending on which republic it was found in.

In the countries under consideration, aliens and stateless persons may become citizens through naturalisation, provided that they have already resided in the country for a stipulated period of time (at least five years in Bulgaria, Poland, Rumania and Czechoslovakia, and at least three years in Hungary and Yugoslavia).

The laws of Bulgaria, Rumania and Yugoslavia require as a necessary condition of naturalisation of aliens the dissolution of legal relations with the country whose citizens they are. In Bulgaria and Yugoslavia, an alien may be admitted to citizenship if he undertakes to withdraw from foreign citizenship. This condition is considered carried out if the applicant is a stateless person or, in accordance with the national law, loses, by reason of naturalisation, citizenship of the country of origin.

Yugoslav laws stipulate that in the event the foreign state does not allow withdrawal from citizenship or imposes conditions which cannot be met, a declaration by the person concerned that upon being admitted to Yugoslav citizenship he will forthwith renounce his previous citizenship is deemed sufficient.

The Hungarian Citizenship Law does not directly demand withdrawal from foreign citizenship as a condition of naturalisation, but it says that being stateless or having lost foreign citizenship will be considered in favour of the applicant.

In Poland, admission to citizenship may be made conditional on evidence of the applicant's having withdrawn from foreign citizenship, and in the GDR and Rumania, on evidence of the applicant's favourable attitude to the social system or his loyalty to the country and people.



Apart from the aforementioned general conditions for naturalisation, the laws of some socialist countries also stipulate additional conditions. In the GDR, a person lodging an application for admission to citizenship must, as a rule, have a residence or domicile in the country; in Rumania, he or she must engage in socially useful work or have sufficient means of livelihood if disabled, and must take an oath of allegiance.

Citizenship may be acquired through privileged procedures. These are extended above all to persons who have rendered services to the state. Apart from that, in Bulgaria, Hungary, Rumania, Czechoslovakia and Yugoslavia privileged procedures for the acquisition of citizenship have been established for women who marry their citizens.[1] Persons adopted by citizens of Bulgaria, Hungary and Yugoslavia also acquire citizenship through privileged procedures.

In Bulgaria, privileges are extended to aliens of Bulgarian extraction who submit a written declaration renouncing their foreign citizenship as well as to stateless persons of Bulgarian extraction. A similar rule exists with regard to foreign nationals or stateless persons whose parents were or are Bulgarian citizens. Bulgarian citizenship may also be acquired through privileged procedures by a person one of whose parents is a Bulgarian citizen, the other parent being stateless or his citizenship unknown. Privileged procedures are made available also to a refugee being a foreign national or stateless person in the event he takes up his permanent residence in Bulgaria.

In Hungary, privileged naturalisation procedures are extended to persons whose relatives in the line of ascent were Hungarian citizens. A person whose child has already acquired Hungarian citizenship may be naturalised waiving the residence requirements.

Under the laws of Yugoslavia, an immigrant acquires citizenship if he has resided in the country for a period

[1] In Bulgaria, they dispense with the requirements to which aliens seeking naturalisation must normally conform; in Hungary, the period of residence is not taken into account; in Rumania, the period is shortened to three years; in Czechoslovakia, the application may be lodged within six months after the registration of a marriage; in Yugoslavia, withdrawal from foreign citizenship and the period of residence are not taken into account.

shorter than prescribed; immigrants are not required to withdraw from foreign citizenship.

Special conditions for naturalisation are established for children. Before attaining a specified age, children automatically acquire citizenship together with their parents. The age is set at up to fourteen in Bulgaria, up to majority in Hungary and the GDR, up to sixteen in Poland, up to eighteen in Rumania and Yugoslavia, and up to fifteen in Czechoslovakia. Children older than the specified age may be naturalised solely at their consent.

Acquisition of citizenship by one parent only may also result in change of citizenship for the children. The laws of socialist countries treat this question differently. In the GDR, for instance, acquisition of national citizenship by one parent is considered to be sufficient for the acquisition of that citizenship by the child.

In other countries, children are admitted to citizenship together with a parent if:

the child is under the authority solely of the parent concerned (Poland),

the other parent has stated to the competent agency his consent to change of citizenship by the child (Poland),

the child resides on the territory of the country with the parent concerned (Rumania and Yugoslavia).

Under the laws of capitalist countries, citizenship may be acquired at birth (depending on the parents' citizenship or place of birth) or through naturalisation. In some countries, aliens may acquire citizenship through privileged procedures by registration. Citizenship lost by a person may in certain cases be restored. Also, citizenship may be acquired in accordance with international treaties.

Acquisition of citizenship by reason of birth is one of the principal forms of the legal regulation of citizenship.

Thus, in accordance with the British laws, citizenship by reason of birth is granted to persons born in the territory of the United Kingdom and colonies. This does not include the children of foreign official representatives and of hostile aliens occupying possessions of the British Crown. Citizenship is also granted to children born abroad whose fathers are British citizens, provided that the father or grandfather



on the father's side were born in the territory of the United Kingdom and colonies. This stipulation with respect to the Briton father may be waived if the father is in the crown service of the United Kingdom or if the child was born in the territory of a Commonwealth country whose laws do not recognise citizenship by reason of the place of birth. Citizenship by reason of birth may also be granted in other instances where the paternal line does not correspond to the criteria of citizenship by reason of birth, but only by special permission of the Home Secretary. Children born in the territory of foreign countries by mothers holding British citizenship are considered to be aliens. Citizenship of adopted children is determined in the same way as that of one's real children.

In Italy, admission to citizenship by reason of birth depends on the father's citizenship. If the father is unknown or is not an Italian citizen or if the child does not follow the citizenship of the foreign father, that child follows the mother's citizenship. Italian citizenship rights are granted to children born in the territory of Italy if both parents have no citizenship or if a child does not follow the citizenship of its foreign parents under the laws of the state whose citizens the parents are.

In the United States, citizenship is granted at birth to persons born in the territory of the United States and subject to its jurisdiction. Because of this condition, American citizenship is not acquired by children of persons enjoying diplomatic immunity. Apart from that, a citizen of the United States by birth is:

(1) a person born outside of the United States and its outlying possessions to parents both of whom are citizens of the United States;

(2) a person born outside of the United States and its outlying possessions to parents one of whom is a citizen of the United States and who has been physically present in the United States or one of its outlying possessions for a continuous period of one year prior to the birth of such person, and the other of whom is a national, but not a citizen of the United States;

(3) a person born in an outlying possession of the United States to parents one of whom is a citizen of the United States and who has been physically present in the United

States or one of its outlying possessions for a continuous period of one year at any time prior to the birth of such person;

(4) a person born outside the geographical limits of the United States and its outlying possessions to parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totalling not less than ten years, at least five of which were after attaining the age of fourteen years (service in the Armed Forces of the United States and in international organisations of such citizen parent may be included in computing the required period of physical presence).

The law stipulates, besides, that to acquire citizenship, a person must reside continuously on the territory of the United States for at least five years between fourteen and twenty-eight years of age. Citizenship acquired in accordance with these conditions is lost unless the person shall come to the United States prior to attaining the age of twenty-three years.

In France, citizens at birth are the legitimate children of a father who is a French citizen or a French mother, and children born out of wedlock if the mother is a French citizen and the father is unknown or has no citizenship. Persons born abroad of a French mother and an alien father whose marriage is registered, and illegitimate children of a French father and an alien mother, are French citizens, unless such persons renounce French citizenship within six months preceding the attainment of majority. French citizenship is also granted to a child born in France to unknown parents or whose father is not a French citizen but was born in France.

In accordance with the laws of the FRG, citizenship at birth is determined by the citizenship of the father. If the father is unknown, the child follows the citizenship of its German mother. A child of unknown parents, found in the territory of the FRG, is considered to be a citizen of that country until the contrary shall be proved.

Under the laws of capitalist countries, aliens or stateless persons may acquire citizenship by naturalisation. The laws in that case establish numerous conditions under which



the privilege of naturalisation will be granted. The general requirement is that of continuous residence in the country for a specified period of years.

In Great Britain, an alien filing a naturalisation application must have resided in the United Kingdom or colonies for at least five out of eight years prior to the date of the application or he must have been in crown service for at least 12 months immediately preceding the date of the application. Besides the residence qualification, an applicant for naturalisation must meet some others, viz. he must have attained majority and be of sound mind, he must be of good character, he must have sufficient knowledge of the English language, he must intend to reside in the United Kingdom or its colonies or to perform crown or other specified service in the United Kingdom or its colonies.

In Italy, a person who wishes to be naturalised must have resided in the country for five years.

The most stringent naturalisation requirements are imposed in the United States where the applicant must demonstrate an understanding of the English language, including an ability to read, write and speak words, and must also demonstrate some understanding of the Constitution and form of government of the United States.

The applicant for naturalisation must have resided in the United States for at least five years and been physically present for not less than half the period in the country and for not less than six months in the state in which the application is submitted. The application will be considered only if the applicant establishes that he has been lawfully admitted to the United States for permanent residence in accordance with an official certificate issued by the immigration service. One must reside permanently in the United States from the date of the application till the final decision (staying outside of the United States for a more than six months running, but less than a year is considered to be prejudicial to the requirement of permanent residence). The applicant must establish that he is, and was during the requisite period of residence, attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States.

Disqualified from naturalisation in the United States are: (1) aliens identified with organisations hostile to the

United States and its institutions, (2) members of the Communist Party of the USA or some other country as well as persons giving them support, (3) exponents of the "doctrines of world communism", (4) members of organisations promoting the violent overthrow of the government and other violent acts, etc., (5) persons producing, publishing or circulating seditious writings, and so on.

To be naturalised in France, one must have resided permanently there for at least five years including civil or military service. Disqualified from naturalisation are persons who were deported from France or sentenced by a court, persons of bad character, persons who failed to become assimilated and do not know the French language, and persons who will be a burden on or a danger to the state. Additional restrictions to naturalisation in France exist for persons having physical or mental defects.

Eligible for naturalisation in the FRG are fully capable persons of unblemished character who have a permanent residence and enjoy a definite income.

In a whole range of cases the general naturalisation rules may be modified.

In Britain, the Home Secretary may shorten the prescribed period of residence. Privileged procedures exist also for nationals of the Commonwealth and the Republic of Ireland, who must have resided for five years in the United Kingdom or been for an equal period in crown service or with British companies, organisations or societies or with international agencies in which Britain participates.

In Italy, the required period of residence may be shortened for an alien who for three years rendered services to the country, including services done abroad, as well as for an alien who has resided permanently in Italy for not less than two years and rendered valuable services to Italy or taken to wife an Italian citizen.

In the United States, privileges at naturalisation are enjoyed by persons whose spouses are citizens of the United States. The residence requirement for such persons is three years. Privileged naturalisation procedures obtain also for children younger than eighteen years of age, adopted by American citizens. Such children must have resided in the USA for two years, being physically present in the territory of the United States for at least one of the two years. Exceptional privileges exist for servicemen. Those who have served for not less than three years in the US Armed Forces may acquire American citizenship with no fixed residence requirements. The same holds for persons who took part on the side of the United States in the first and second world wars and in the Korean and Vietnam wars.



In France, the term of permanent residence may be reduced to two years for persons who were born in France, have a French wife, hold a French college diploma, and have rendered important services to France in the field of art, science or economy. No fixed residence requirements exist for minor children of parents acquiring French citizenship; aliens adopted by French citizens; aliens serving in the French Army or having rendered to France services of exceptional importance.

In Britain, Italy and France, citizenship may be granted to a certain group of persons by a process simpler than naturalisation. In Britain, this procedure is called registration. Those who enjoy this privilege may be registered as citizens merely upon expressing their will in an application.

In Britain, the status of citizen may be acquired through registration by non-citizen (or Commonwealth citizen) women who marry British citizens and renounce their previous citizenship; widows and divorced wives of British citizens; British nationals; and, in special circumstances, by minors. All persons who acquire citizenship through registration must take an oath of allegiance to the British Crown.

In Italy, citizenship through recognition is acquired by an alien who was born in Italy or whose parents had resided permanently there for not less than ten years prior to his birth, provided that he (1) is serving in the armed forces or has been appointed to an official post in Italy; (2) has resided permanently in Italy until 21 years of age and declares within one year his election of Italian citizenship; (3) has resided permanently in Italy for not less than ten years and failed to declare his intention to retain foreign citizenship within the term prescribed by Point 2. Italian citizenship may be acquired through privileged procedures also by an alien woman who marries an Italian citizen, as in accordance with the Italian laws a married woman cannot hold citizenship other than her husband's, even if separated.

In France, citizenship is acquired through recognition by an illegitimate child adopted before attaining majority by the French father (in other cases adoption by French citizens does not result in automatic acquisition of citizenship by a child); a woman who marries a French citizen, unless she declares beforehand her intention to retain her citizenship (in that case, the French Government may, within six months after the registration of the marriage, prevent such acquisition of citizenship by special decree); a person born in France to alien parents, upon attaining majority, if such person has resided permanently in France from the age of sixteen years till majority or is serving in the French Armed Forces (such person may, within six months prior to attainment of majority, renounce citizenship while the government may, within the same term, prevent admission to citizenship on the grounds of insufficient assimilation as well as physical or mental defects); a minor born in France to alien parents (without anyone's permission, if he has attained eighteen years of age; with the permission of his parents or guardians, between seventeen and eighteen years; and through his legal representatives, if he has not attained seventeen years of age), provided that he has resided permanently in France for not less than five years; a person adopted by a French citizen before attaining majority, if such person resides permanently in France.

Laws of various capitalist countries contain an unequal proportion of rules governing the procedure of the acquisition and loss of citizenship.

In the United States, the process of acquisition and loss of citizenship is regulated in the laws themselves while in Britain, for instance, such matters are largely handled through statutory instruments.

Under the laws of Great Britain, matters pertaining to the acquisition or loss of citizenship are entrusted to the discretion and control of the Home Secretary. He may grant citizenship upon receiving an application from the person concerned, children being represented by their legal representatives or guardians. Taking an oath of allegiance to the Crown is an indispensable condition of acquiring citizenship. Permission to withdraw from British citizenship is granted also by the Home Secretary. Deprivation of citizenship is effected through an order of the Home Secretary.



Persons deprived of citizenship, in the event they are physically present in the country, must be deported. All disputes concerning loss of citizenship and deportation are considered by special officials and tribunals of the Home Office, the last instance being, however, the Home Secretary.

Italian citizenship is granted by a presidential decree upon the agreement of the State Council. The application for admission to Italian citizenship is sent to the Minister of the Interior through registry offices. Appended to the application must be all the necessary papers certifying that the interested person meets the legal requirements. Persons who reside abroad must hand in their applications to a diplomatic or consular representative. The presidential decree granting citizenship comes into effect after the oath of allegiance is taken. The oath must be taken by persons residing in Italy in registry offices, and by those residing abroad, at embassies or consulates. A person who has committed while abroad a seditious act may be deprived of his citizenship by presidential decree issued at the proposal of the Minister of the Interior and upon agreement with the Minister of Foreign Affairs. Conclusions on these matters are made by a Commission consisting of a State Councillor (who chairs it), the Director-General of State Security, the Director-General of the Ministry of Foreign Affairs, and two Appeal Judges appointed by the Minister of Justice. Deprivation of citizenship may, should the Commission agree, be accompanied by sequestration and, in cases of a more grave nature, by confiscation of property.

In the United States, naturalisation is an exclusive function of the courts, viz. all federal district courts as well as the district courts of the District of Columbia, Puerto Rico, the Virgin Islands and Guam, and state courts of unlimited jurisdiction which have a seal and a clerk. The petition with the necessary papers is handed in to the clerk. The latter sends it on to the Attorney General who appoints officials of the immigration and naturalisation service to conduct a preliminary investigation. In the course of the investigation the facts essential to the granting of citizenship are thoroughly checked and the results are submitted to the Attorney General and the court. Should the Attorney General not agree with the officials' conclusions, he submits his own opinion to the court. The final decision is passed in open

court. The court considers the written testimony of two witnesses confirming the facts essential to admission to citizenship. Two other witnesses are interrogated. If the court grants the petition, the petitioner takes an oath pledging allegiance to the United States and its constitutional institutions. The newly invested citizen receives an official certificate of naturalisation.

Naturalisation may be revoked. Such revocation is within the competence of courts which grant citizenship. The decision is passed in the course of a judicial proceeding, action being brought by an attorney. The person concerned must be notified of action being brought against him at least sixty days before the case is heard in open court.

Loss of citizenship must also be established through a judicial proceeding. The burden of proof as to the fact that citizenship has been lost lies on the body or person concerned.

US diplomatic or consular officials are to pass to the State Department information about Americans residing abroad with respect to whom the question may be raised concerning the loss of citizenship by them. At the decision of the State Secretary, the relevant papers containing such information are handed over to the Attorney General while a notification is sent to the person concerned.

In accordance with the French laws, the application stating a person's desire to acquire or renounce French citizenship must be signed in the presence of a judge in the place of residence of the person concerned or, if the applicant resides abroad, in the presence of a diplomatic or a consular representative. Such application will be void unless it is further registered at the Ministry of Justice. The Minister of Justice may refuse to allow the application to be registered, if the applicant has failed to fulfil the statutory requirements. The Minister's refusal is subject to appeal in court. The truth of the application may be contested by the Prosecutor's Office.

The Government issues naturalisation and reintegration decrees at the suggestion of the Minister of Justice. Any such decree may be cancelled within a year, should facts come to light preventing the grant of or restoration to citizenship. Loss of French citizenship follows the passing of a decree by the government at the suggestion of the Minister



of Justice who also initiated proceedings for the deprivation of citizenship, the person concerned being notified of the steps taken against him. Decrees on deprivation of citizenship are passed by the Government at the suggestion of the Minister of Justice and in accordance with the opinion of the State Council.

All disputes relating to the acquisition or loss of citizenship are within the purview of the civil courts. Litigation concerning citizenship may be initiated by the court, the Prosecutor's Office or the person concerned. Every case concerning the presence or absence of French citizenship must be tried with the participation of a public prosecutor. A copy of the records is sent to the Minister of Justice. The burden of proof lies on the body or person having initiated the litigation.

French citizenship is confirmed by a certificate issued by a judge, mentioning the act whereby a person may be considered a French citizen, and the document establishing the fact of citizenship. Should a judge refuse to issue such a certificate, a complaint may be filed with the Minister of Justice.

In the FRG, admission to and release from citizenship is the function of the agencies of provinces (*Länder*) which act on behalf of the Federation. Admission to and release from citizenship are effective since the moment of the handing in of the act issued by the higher administrative bodies of the Länder. The competence of the bodies authorised to admit to and release from citizenship is determined by the central organs of the Länder.

Restoration to citizenship takes place upon notification of the Federal Minister of the Interior. Should the latter raise objection, citizenship is not granted.

Refusal on the part of competent agencies to grant permission to withdraw from citizenship is subject to appeal. The terms of reference of the agencies looking into such complaints as well as the process of their consideration are determined by the laws of the Länder.

The fees relating to admission to and release from citizenship are set by the Minister of the Interior with the consent of the Bundesrat. The latter issues decisions relating to certificates of admission to and withdrawal from citizenship as well as certificates of citizenship.

One of the ways in which citizenship may be acquired is restoration of a person to citizenship.

Soviet legal practice has seen numerous instances of restoration of citizenship to groups of population which lost it in connection with diverse events of a purely domestic or international nature. This above all concerns cases of restoration to Soviet citizenship of some categories of persons by reason of amnesty. Besides their proper object of relieving from punishment and facilitating the return to the Motherland of the persons amnestied, acts of amnesty also restored such persons to Soviet citizenship.[1]

Legal regulation of the matters concerning restoration to Soviet citizenship was stipulated in the 1924, 1930 and 1931 Union Citizenship Rules. Under the 1924 Rules, restoration to citizenship was referred to the joint jurisdiction of the USSR and the Union republics. Restoration was effected through the issue of a decision of the Central Executive Committee of the USSR or of a Union republic, in a manner similar to the admission to Soviet citizenship of aliens residing abroad.[2] Petitions for restoration to citizenship were to be filed with diplomatic, consular or similar representative Soviet agencies abroad following which an appropriate request was made to the Central Executive Committee of a Union republic by the authorised representative of the People's Commissariat of Foreign Affairs at the republican Council of People's Commissars, or the People's Commissariat of Foreign Affairs submitted the

[1] On November 3, 1921, the All-Russia Central Executive Committee granted full amnesty to persons who had participated as rank-and-file soldiers in whiteguard military organisations. The amnestied were given a chance to come back just as if they were ordinary prisoners of war returning to their country (*SU RSFSR*, No. 74, 1921, Item 611).

In 1922-1923, the ARCEC amnestied several times rank-and-file White troops and participants in armed revolts as well as groups of refugees. Some decrees on amnesties which restored to Soviet citizenship groups of persons were issued also in other Soviet republics (the Ukraine and Byelorussia). Some individual amnesties also restored to Soviet citizenship certain persons.

[2] Apart from that, Note 2 to Art. 6 of the 1924 Rules provided for a privileged reintegration of children who no longer were Soviet citizens because their parents lost Soviet citizenship. Such persons could be restored to citizenship by filing an application with a regional Executive Committee or one of equal status.



matter to the Central Executive Committee of the USSR.

The 1930 Rules on Citizenship of the USSR extended the jurisdiction of the USSR with respect to restoration to citizenship. The latter was made the exclusive prerogative of the USSR as represented by the Presidium of the Central Executive Committee. Persons who had lost or been deprived of Soviet citizenship could be restored to it by decision solely of the Presidium of the Central Executive Committee of the USSR.

The 1931 Rules on Citizenship of the USSR considerably extended the jurisdiction of the Union republics. The right to restore to Soviet citizenship ceased to be the exclusive prerogative of the USSR. Persons who lost Soviet citizenship could be restored to it by decision of the Presidium of the Central Executive Committee of the USSR or of a Union republic.

The 1938 Soviet Citizenship Law said nothing about either the conditions or the process of restoration to Soviet citizenship.

Under Clause 19 of the Citizenship of the USSR Act, 1978, a person who has lost citizenship of the USSR may be restored to citizenship at his or her request. Citizenship is restored by promulgation of the appropriate Decree of the Presidium of the USSR Supreme Soviet. When a person's application for restoration of USSR citizenship is refused, a resolution to that effect is passed by the Presidium. In the same way as with naturalisation, persons applying for restoration of Soviet citizenship who are living abroad transmit their applications to the Presidium of the USSR Supreme Soviet through the appropriate diplomatic and consular representatives of the USSR.

A fairly large group of normative acts regulating restoration to Soviet citizenship were passed before and just after the last war. The appearance of these rules fixed in decrees of the Presiduim of the Supreme Soviet of the USSR was due both to the territorial growth of the USSR, which was joined by new Union republics, and the fact that many former subjects of the Russian Empire residing abroad as well as those who for various reasons had lost Soviet citizenship showered the Soviet Government with requests to be restored to Soviet citizenship.

As an act of humanism and magnanimity, the Presidium

of the Supreme Soviet of the USSR issued decrees on restoration to Soviet citizenship of persons referred to above who resided on the territory of Manchuria (the Decree of November 10, 1945), in Sinkiang Province and the cities of Shanghai and Tientsin (the Decree of January 20, 1946), France (the Decree of June 14, 1946), Yugoslavia (the Decree of June 14, 1946), Bulgaria (the Decree of June 14, 1946), Japan (the Decree of September 26, 1946), Czechoslovakia (the Decree of October 15, 1946) and Belgium (the Decree of May 28, 1947).[1]

The decrees extended to persons who were subjects of the former Russian Empire on November 7, 1917, and persons who had had Soviet citizenship and lost it, as well as to their children. Such persons could be restored to Soviet citizenship through submitting an application and papers certifying their identity and their previous allegiance to the former Russian Empire or affiliation to Soviet citizenship, within a specified period to the embassy, mission or consulate in respective countries.[2] Their petitions were considered by the embassies, missions or consulates, after which, if the papers submitted by the petitioner were considered satisfactory under the Decree, such petitioner was issued with a Soviet residence permit.[3] Persons who, under the decrees, could be restored to Soviet citizenship but had failed to avail themselves of the right within the prescribed time, could henceforth petition only for acquisition of Soviet citizenship on general terms, i.e. through naturalisation.[4]

Soviet citizenship may also be acquired through option. From the standpoint of the final result, option may equally

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[1] *Vedomosti Verkhovnogo Sovieta SSSR*, No. 78, 1945; Nos. 2, 21, 36, 37, 1946; No. 18, 1947.

[2] Persons residing in Japan submitted their petitions for restoration to Soviet citizenship to the Soviet Member of the Allied Council for Japan.

[3] A Soviet residence permit is a document certifying the bearer's affiliation to Soviet citizenship.

[4] The Decree of the Presidium of the Supreme Soviet of the USSR on Restoration to Citizenship of the USSR of Inhabitants of Bessarabia and the Acquisition of Soviet Citizenship by Inhabitants of Northern Bukovina, issued on March 8, 1941, is somewhat different. Under Articles 1 and 2 of the Decree, all persons who on November 7, 1917



be regarded as either acquisition of or withdrawal from citizenship, as the person opting for citizenship can withdraw from citizenship of one state and acquire that of another state.

This does not, however, rule out cases in which option under international normative agreements resulted mainly in the acquisition of Soviet citizenship by a certain category of persons without providing simultaneously for withdrawal from Soviet citizenship. Thus, in connection with the Treaty between the USSR and the Czechoslovak Republic on the Transcarpathian Ukraine signed on June 29, 1945—whereby the Transcarpathian Ukraine was reunified with its old homeland, the Ukraine, and was incorporated in the Ukrainian Republic—it became necessary to determine the citizenship of persons of Slovak or Czech nationality residing permanently on the territory of the Transcarpathian Ukraine. It was equally necessary to settle the question as to the citizenship of the Ukrainians and Russians residing in areas of Slovakia. For this reason, the two governments concluded a special agreement concerning the right of the said persons to opt for citizenship respectively of Czechoslovakia or the USSR. The agreement was connected with the Protocol to the Soviet-Czechoslovak Treaty on the Transcarpathian Ukraine.[1]

Under Art. 2 of the Protocol, persons of Ukrainian or Russian nationality residing on the territory of Czechoslovakia (in areas of Slovakia) were granted the right to opt for citizenship of the USSR until January 1, 1946. The

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were subjects of the former Russian Empire and resided in Bessarabia on June 28, 1940 (and their children), irrespective of whether or not they had been before June 28, 1940 Rumanian citizens, were considered restored to Soviet citizenship since June 28, 1940. Permanent inhabitants of Bessarabia who on November 7, 1917 were subjects of the former Russian Empire but who did not on June 28, 1940 reside on the territory of Bessarabia and were temporarily outside of the USSR had to register before May 1, 1941 at embassies and consulates of the USSR as Soviet citizens by making a personal appearance or sending an application by post (*Vedomosti Verkhovnogo Sovieta SSSR*, No. 13, 1941). As we see, in this instance restoration to Soviet citizenship is similar to admission to Soviet citizenship of a certain group of persons meeting the requirements.

[1] *Sbornik deistvuyushchikh dogovorov, soglashenii i konventsii, zaklyuchonnykh SSSR s inostrannymi gosudarstvami*, Issue XI, No. 406, Gospolitizdat, Moscow, 1955, pp. 31-32.

Article ran: "Option shall occur in accordance with existing legislation of the USSR and shall become valid only with the consent of the authorities of the Soviet Union." Persons taking advantage of the right of option were to resettle in the Soviet Union within twelve months after receiving the consent of the Soviet Government to grant them Soviet citizenship.

The Protocol also stipulated that persons of Slovak or Czech nationality residing on the territory of the Transcarpathian Ukraine could opt for citizenship of the Czechoslovak Republic until January 1, 1946. Option was carried out in accordance with the laws of Czechoslovak Republic and could become valid only with the consent of Czechoslovak authorities. After receiving the consent of the Czechoslovak Government for option, the persons concerned were to resettle in the Czechoslovak Republic within twelve months.

Persons of Ukrainian or Russian nationality having opted for citizenship of the USSR became Soviet citizens; persons of Slovak or Czech nationality not having taken advantage of the right to opt for citizenship of the Czechoslovak Republic were considered to be Soviet citizens.

Under the agreement one could not withdraw from Soviet citizenship through option.

Option should be distinguished from election of citizenship by persons with dual citizenship effected under the conventions between the USSR and other socialist countries concerning dual citizenship. The conventions made it possible for persons with dual citizenship to elect the citizenship of one of the Contracting Parties. The Contracting Parties, in their turn, undertook, upon due consideration of the declarations, to regard the applicants as citizens of that country whose citizenship they elected. As a result of such election, a person did not, in fact, acquire any new citizenship.

The right of option or election cannot be regulated solely by national law as the very possibility of opting for citizenship of either of two states can only follow from an appropriate agreement between the states.

Option procedures for certain categories of persons were repeatedly dealt with in treaties and special agreements concluded between the Soviet Union and foreign countries.



Option is not an independent method of acquisition of citizenship. At the same time, relations concerning option are, as a rule, closest to the relations arising in connection with withdrawal from citizenship. For this reason, the rules regulating option relations should, in our view, be referred to the rules governing relations concerning withdrawal from Soviet citizenship.

In most other socialist countries, the laws also make special provision for restoration to citizenship. As a general rule, a person can be restored to citizenship, if he lost it, with the permission of competent agencies. Apart from that, a person can be restored to citizenship if he lost it owing to a marriage with an alien, if the marriage was dissolved or declared invalid (Poland and Hungary), or if his or her parents withdrew from or renounced citizenship (Yugoslavia).

A person can be restored to citizenship only provided that he is going to resettle in the country concerned (Bulgaria and Hungary) or that he demonstrates his loyalty to its state and social system (Bulgaria). In Poland, a person may be required to furnish proof that he has lost foreign citizenship for his application to be accepted. In Yugoslavia, the applicant is required to take up permanent residence in that country prior to attaining twenty-five years of age.

A person residing permanently abroad may be restored to citizenship under certain conditions (Hungary and Rumania).

In Bulgaria, persons deprived of Bulgarian citizenship at some previous date without good reason or for reasons no longer valid can be restored to citizenship.

Repatriation[1] is a form of restoration to citizenship in the socialist countries.

Under Polish law, a repatriate is an alien of Polish nationality or ancestry who comes to Poland to reside there permanently and has permission to do so.

Citizenship acquired by parents through repatriation procedures extends to their children. In the event only one

[1] Repatriates are naturalised without regard to the usual residence requirements.

parent is repatriated, the child becomes a Polish citizen only with the consent of the other parent.

In Rumania, citizenship through repatriation may also be acquired by the spouse of a repatriate, provided that such spouse withdraws from foreign citizenship.

Under the laws of capitalist countries, a person who has lost citizenship may be restored to it. As a rule, the procedure is simpler than naturalisation.

The law defines the range of persons who may take advantage of this right.

In Italy, persons who have lost citizenship for any of the reasons enumerated in the law, except those having lost it through committing an offence abroad, may be restored to citizenship. A woman who lost citizenship through marrying an alien may be restored to Italian citizenship.

In the United States, a woman who lost American citizenship before September 22, 1922 through marrying an alien or because her husband had lost American citizenship, as well as a woman who lost her citizenship after September 22, 1922 through marrying an alien whose application for naturalisation was rejected, may be restored to American citizenship. Persons who lost American citizenship through being at the time of World War II in the Armed Forces of the Allied countries, may also be reintegrated.

Under the French laws, persons deported from France or those who acquired foreign citizenship to dodge the draft cannot be reintegrated.

As a general rule, in all countries restoration to citizenship is subject to certain conditions which the petitioner must meet.

In Italy, a person applying for reintegration must be in the military or civil service. He must file a declaration renouncing foreign citizenship or furnish proof of his having given up a government job or withdrawn from military service in a foreign country if he lost Italian citizenship by reason of these circumstances. Whatever the case, the petition for reintegration is granted only if the petitioner resettles in Italy. If loss of Italian citizenship was due to the acquisition of citizenship of a foreign country, reintegration requires at least two years' residence in Italy. This



requirement may be waived. The Government may permit persons to be restored to citizenship who have not resided for over two years in the country whose citizenship they hold at the time of the filing of the application and who intend to resettle or have resettled in a country without becoming its citizens.

In the United States, a person who wishes to be restored to American citizenship lost owing to a marriage with an allien must meet all naturalisation requirements except the residence requirement. The applicant must also establish that he is, and was during five years prior to the filing of the application, a person of good moral character, attached to the principles of the American Constitution. Persons who have lived abroad for a long time must also obtain permission from competent agencies to reside permanently in the United States. Almost the same requirements must be met by persons filing an application to be restored to citizenship lost on account of service in foreign armed forces during World War II. Such persons must meet the residence requirements.

A reintegrated person acquires status equal to that of a US citizen by birth or a naturalised citizen, depending on the status he enjoyed before loss of citizenship.

The French law requires that a person wishing to be reintegrated should have maintained moral, intellectual, professional, economic or other ties with France.

## Chapter 7

### LOSS OF CITIZENSHIP

Under the Soviet laws, loss of citizenship may follow if a person is deprived of it by decision of a competent government agency or if a person withdraws from citizenship in a manner prescribed by law. In either case, the person enters into definite relations with the state.

The rules regulating relations concerning deprivation of citizenship may be of a general nature—like the Union Citizenship Rules—or they may be fixed in current laws, in which case they will deal with concrete questions of Soviet legal policy.

The Soviet state had to tackle questions concerning deprivation of citizenship early in its existence. This was necessitated by the revolutionary events in the country and the aftermath of the world war. Thousands of former subjects of the Russian Empire and persons formally retaining Soviet citizenship found themselves abroad. In addition, they were often enough drawn into diverse whiteguard counter-revolutionary organisations and engaged in anti-Soviet activities. In that situation, great importance attached to the Decree on the Deprivation of Some Categories of Persons Residing Abroad of Their Citizenship Rights,[1] issued by the Council of People's Commissars of the RSFSR on October 28, 1921.

[1] *SU RSFSR*, No. 72, 1921, Item 578. Earlier still, in 1918, under a decision of the All-Russia Central Executive Committee, all persons who left the Red Army without due permission, having stayed in the Red Army less than six months after volunteering, were to be deprived of Soviet citizenship (*Ibid.*, No. 33, 1918, Item 445).



In accordance with the Decree, deprived of Soviet citizenship were:

(a) persons who had resided continually abroad for more than five years and who failed to obtain passports or related certificates from Soviet agencies abroad before March 1, 1922,[1]

(b) persons who, after November 7, 1917, went abroad without proper permission from Soviet government,

(c) persons who had served as volunteers in the armies which had fought Soviet rule or who had participated in any way in counter-revolutionary organisations,

(d) persons who could have opted for Soviet citizenship but had not done it during the option period,[2]

(e) persons not mentioned in points "a" and "c" and who had failed to be registered within the required periods of time at Soviet agencies abroad.

The Decree allowed persons who left the country after November 7, 1917, without due permission of Soviet government, as well as those who had served as volunteers in the White armies or taken part in counter-revolutionary organisations, to file a petition before June 1, 1922, through the nearest representation of the RSFSR abroad, asking the All-Russia Central Executive Committee to restore them to Soviet citizenship.

Thus, the purpose of the Decree was not only to deprive of citizenship persons hostile to the Soviet state, but also to retain the citizens who had realised the need to take part with the whole people in building socialist society. This was a concrete expression of the lofty humanism and democracy of the Soviet system.

[1] The Decree of October 28, 1921 was replaced on December 15, 1921 by a similar Decree of the ARCEC and CPC RSFSR which prolonged the term till June, 1, 1922.

[2] The right to opt for Soviet citizenship was granted under Art. VI of the Peace Treaty with Lithuania, signed on July 12, 1920; Art. VIII of the Peace Treaty with Latvia, signed on August 11, 1920; Art. 9 of the Peace Treaty with the Republic of Finland, signed on October 14, 1920; Art. VI of the Peace Treaty, signed by Russia and the Ukraine with Poland on March 18, 1921. Option of Ukrainian citizenship was envisaged, for example, by Art. IV of the Peace Treaty between the Ukraine and Lithuania, signed on February 14, 1921. See *Dokumenty vneshnei politiki SSSR* (Documents of USSR Foreign Policy, Vol. III, Moscow, 1959-1960, pp. 32-33, 106, 107, 248, 270, 519, 624-626; Vol. IV, pp. 524-525, 614-618).

Acts similar to the Decree of October 28, 1921 were issued in other Soviet republics as well.[1]

Besides those who had withdrawn from Soviet citizenship in the manner prescribed by the law, the 1924 Soviet Citizenship Rules considered as having lost Soviet citizenship also persons deprived of it under the statutes of Union republics published before July 1923 or deprived of it by dint of the Union law (Art. 12, "a"). Thus, the Decree of the Council of People's Commissars of the RSFSR issued on October 28, 1921 as well as similar acts issued in other Soviet republics fully retained their force.

On November 13, 1925, the Central Executive Committee and the Council of People's Commissars of the USSR passed a decision whereby former prisoners of war and interned servicemen of the tsarist and the Red Army as well as amnestied persons who had served in the White armies or taken part in counter-revolutionary revolts, who resided abroad and had failed to register within the required time, were deprived of Soviet citizenship.[2] Such persons could apply for admission to Soviet citizenship on the same terms as aliens.

As a follow-up of the Decree of October 28, 1921 and related laws of other Union republics, the Central Executive Committee and the Council of People's Commissars of the USSR issued an ordinance on May 27, 1933,[3] which deprived of Soviet citizenship all former Russian subjects who had left the country before October 25, 1917 and become foreign citizens or filed applications for admission to foreign citizenship. Apart from its chief purpose, which was to get rid of persons not worthy of the name of Soviet citizens, the ordinance was also aimed at preventing dual citizenship.

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[1] In the Ukraine, for instance, a decision of the Council of People's Commissars, issued on March 28, 1922, fixed the time of registration as until January 1, 1923 (*SU UkSSR*, No. 14, 1922, Item 237). The decision of the CPC of Byelorussia, issued on August 4, 1922, did not mention five years' continuous residence abroad as a reason for the deprivation of citizenship, but considered going abroad without due permission of Soviet authorities sufficient reason thereof. The time of registration was also fixed as until January 1, 1923 (*SU BSSR*, No. 12, 1922, Item 148).

[2] *SZ SSSR*, No. 77, 1925, Item 581.

[3] *Ibid.*, No. 34, 1936, Item 200.



Sustained anti-Soviet activities of some emigrés formally retaining Soviet citizenship made necessary repeated publication of acts depriving such persons of Soviet citizenship.[1]

The 1924 Rules considered it sufficient reason for depriving a person of Soviet citizenship if the person, having left the Soviet Union with due permission of the appropriate authorities of the USSR or a Union republic or without such permission, had failed to or would not return at the request of the authorities concerned.[2]

The Rules also envisaged deprivation of citizenship by sentence of a court. This rule was in keeping with the Fundamental Principles of Criminal Legislation of the USSR issued on October 31, 1924, which regarded deprivation of Soviet citizenship by sentence of a court as a measure of criminal punishment.[3]

Under the 1924 Rules, powers to deprive of Soviet citizenship were vested in the USSR and Union republics as represented by the Central Executive Committee of the USSR and republican CECs. Decisions on specific cases

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[1] See the Ordinance of the Central Executive Committee of the USSR, issued on February 20, 1932, Concerning Deprivation of Citizenship of the USSR and Prohibition of Entry into the Soviet Union of Certain Persons Residing Abroad as Emigrés and Retaining Soviet Passports (*SZ SSSR*, No. 13, 1932, Item 70). In 1928, the Central Executive Committee of the USSR, at the instance of Soviet embassies, deprived of Soviet citizenship sixteen persons for engaging in sustained anti-Soviet activities (the figures are mentioned in D. L. Zlatopolsky's *Gosudarstvennoye ustroistvo SSSR* [State Organisation of the USSR], Moscow, 1960, pp. 253-254).

[2] Article 41 of the Consular Rules of the USSR, approved by the Central Executive Committee and the Council of People's Commissars on January 8, 1926, authorised the consul to recommend, in urgent cases and with the consent of the ambassador, that persons who refused to return to their native country at the consul's request be deprived of Soviet citizenship (*SZ SSSR*, No. 10, 1926, Item 78).

[3] *SZ SSSR*, No. 24, 1924, Item 205. The Plenary Session of the Supreme Court of the USSR explained in its decision of June 19, 1934 that persons who departed abroad without due permission after the publication of the Decree of the CPC RSFSR of December 15, 1921, or after similar decisions of other Soviet republics could be deprived of citizenship by special decision of the Government or the courts of the USSR or Union republics passed in each individual case separately (see *Sbornik postanovlenii i razyasnenii Verkhovnogo Suda SSSR*, [Collected Decisions and Clarifications of the Supreme Court of the USSR], Moscow, 1936, pp. 104-105).

of deprivation of citizenship passed by republican CECs were subject to approval by the CEC of the USSR (Art. 17).

This provision was materially altered by the 1930 and 1931 Rules on Citizenship of the USSR. Now deprivation of citizenship of a Union republic and thereby of the USSR could be effected by decision of both the Presidium of the CEC of the USSR and the Presidium of the CEC of the respective Union republic (Art. 17). The Constitution of the USSR (Article 59) obliges Soviet citizens to uphold the honour and dignity of Soviet citizenship. Actions bringing discredit on the honour of Soviet citizenship and incompatible with the upholding of Soviet citizenship may provide grounds for the adoption of a decision depriving the person of Soviet citizenship.

The 1978 Citizenship Act treats deprivation of citizenship as an exceptional measure taken in cases "a person has committed actions bringing discredit on the calling of USSR citizen and damaging the prestige or national security of the USSR" (Clause 18).

The Soviet public has been informed at the time of the withdrawal of USSR citizenship from individual renegades who had betrayed the interests of the people, or whose activity had been widely used by certain circles for purposes hostile to socialism and the Soviet Union.

Decisions depriving a person of citizenship are taken in accordance with representations made and by the passing in each case of a Decree of the Presidium of the USSR Supreme Soviet.

The legislation of European socialist countries also, as a rule, defines the grounds for forfeiture of citizenship:

violation of national security, bringing discredit on the state, conduct unworthy of a citizen (Bulgaria); violation of allegiance to the state (Hungary, Poland); violation of civil duties (the GDR); committing acts hostile to the country or such as may damage its good name (Rumania); harming the interests of the country (Poland, Czechoslovakia, Yugoslavia);

departure abroad without due permission (Bulgaria, Poland, Rumania, Czechoslovakia);

failing to return to the country within due time (in Bulgaria within six months after the expiry of the term of permitted stay abroad, and in Poland and Czechoslovakia within thirty days after the presentation of the demand to return);

dodging compulsory military service (Bulgaria, Poland);

being sentenced abroad for an offence which is punishable under national law as well (Poland); being sentenced at home or abroad for an offence committed abroad (Hungary);

being in the civil service of a foreign state without due permission or joining the armed forces of a foreign state (Bulgaria, Rumania, Czechoslovakia);

unlawful acquisition of foreign citizenship (Bulgaria, Rumania, Czechoslovakia);

acquisition of citizenship of the country by fraud (Rumania).

A Yugoslav citizen holding foreign citizenship and residing permanently abroad may be deprived of citizenship if he refuses to obey the decisions of Yugoslav executive and legislative bodies; fails to fulfil his duties of a citizen as prescribed by the Constitution; is active in organisations whose purposes clash with the general principles of the UN Charter.

Under the laws of Bulgaria and the GDR, citizenship may be lost through revocation of naturalisation. In both countries, naturalisation may be revoked if it was induced by fraudulent misstatements and concealment of facts which would have prevented naturalisation. In the GDR, it may also be revoked if the person has grossly violated the obligations ensuing from his admission to citizenship and proved unworthy of the name of a citizen of the GDR.

Withdrawal from Soviet citizenship as an independent way of losing citizenship was, prior to the establishment of the USSR and the adoption of the 1924 Rules on Union Citizenship, regulated only in the Ukraine, Byelorussia and, to some extent, in Georgia.[1]

[1] Ministry of Internal Affairs Circular No. 263, published in the RSFSR on July 21, 1921, stated that everyone who wished could withdraw from Soviet citizenship on general terms. Still earlier the

The 1922 Rules on Aliens in the Ukraine established a complicated procedure of withdrawal from citizenship.[1] A person wishing to withdraw from citizenship of the Ukrainian Republic had to file an application with the *gubernia* (regional) Executive Committee attaching to it his residence permit, papers certifying his non-Ukrainian origin, a certificate issued by the judicial authorities stating that he was not under investigation on a charge of having committed a crime or a counter-revolutionary act, a signed statement to the effect that he owed no debts to the state, and a certificate issued by the diplomatic representative of the state whose citizenship the applicant intended to acquire, stating that there were no objections to the acquisition of such citizenship.

The 1924 Union Citizenship Rules introduced a general procedure of withdrawal from Soviet citizenship (Art. 13), viz. that such withdrawal was only possible with the permission of the Central Executive Committees of Union republics or the CEC of the USSR.

The 1930 and 1931 Rules on Citizenship of the USSR mentioned the following basic cases of withdrawal from Soviet citizenship:

1. If a citizen resided in the USSR, he could withdraw from Soviet citizenship under a decision of the Presidium of the CEC of the USSR or the Presidium of the CEC of the respective Union republic. Should the Presidium of the republican CEC reject the application, the applicant could complain to the Presidium of the CEC of the USSR.[1]

2. If a Soviet citizen resided abroad, he could withdraw from Soviet citizenship only under a decision of the Presidium of the CEC of the USSR.

The 1938 Citizenship Law laid down that withdrawal from citizenship of the USSR was allowed by the Presidium of the Supreme Soviet of the USSR.

The 1978 Citizenship Act deals with relinquishment of USSR citizenship among the grounds for loss of such citizenship (Clause 16). Withdrawal of citizenship is decided by the Presidium of the USSR Supreme Soviet.

Renunciation of USSR citizenship may be refused if the applicant has not fulfilled his or her duties to the state or liabilities in respect of property connected with the vital interests either of citizens or of state, co-operative, or other social organisations.

Renunciation of USSR citizenship is not sanctioned if the applicant is under indictment, or if there is a court judgement liable to be fulfilled in force against him (or her), or if the person's renunciation of USSR citizenship is against the interests of the national security of the USSR.

In accordance with the general procedure provided for by Clause 27 of the Citizenship Act, applications for release from citizenship by persons under 18 years of age are made by their legal representatives.

The ruling of the Presidium of the USSR Supreme Soviet on an application for the release of a specific person from citizenship of the USSR is made in each case in the form

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withdrawal procedures were established by a Decree of the RSFSR Council of People's Commissars of July 13, 1918 (*SU RSFSR*, No. 50, 1918, Item 577). It concerned refugees from areas seized under the Brest Treaty, residing within the boundaries of the Russian Republic. Such persons could, in effect, opt for citizenship. Those wishing to withdraw from Russian citizenship could, within a month after the publication of the Decree, file an appropriate application with the People's Commissariat of Internal Affairs. The applicants had to submit papers issued by the former or present authorities and certifying that they were residents of the areas seized under the Treaty. In the absence of such papers, the fact had to be confirmed by witnesses. The applications were to be considered in accordance with the instructions of the People's Commissariat of Internal Affairs. Under the Decree of the CPC RSFSR, issued on July 27, 1918, refugees from the areas of Russia occupied by the hostile powers or seized from her under the Brest Treaty, who had settled on the territory of the Russian Republic and declared their withdrawal from Russian citizenship in keeping with the CPC Decree of July 13, 1918, were granted the same rights as the rest of the citizens of the Russian Republic.

[1] *SU UkSSR*, No. 14. 1922, Item 237.

[1] Under Art. 231 of the Law on Compulsory Military Service adopted by the CEC and CPC USSR on August 13, 1930, servicemen could ask for permission to withdraw from Soviet citizenship, provided that they had served the prescribed term or been discharged altogether (*SZ SSSR*, No. 40, 1930, Item 424).

of an edict; and rejection of an application is made in the form of a resolution.

The legislation of other socialist countries also makes release from citizenship contingent on requirements established by the law, in particular if the person:

owes the state no taxes, social insurance payments, damages, or other debts (Bulgaria, Hungary, Rumania and Yugoslavia);

has had no criminal proceedings instituted or sentence pronounced against him (Bulgaria, Hungary, Rumania and Yugoslavia);

has no commitments with respect to marriage and family relations (Bulgaria, Yugoslavia);

has attained eighteen years of age (Rumania, Yugoslavia);

can prove that he holds foreign citizenship or can acquire it (Hungary, the GDR, Yugoslavia).

Apart from that, in Rumania the applicant is required to make a declaration promising to commit no actions after the loss of Rumanian citizenship that could harm the national interests.

Under the Hungarian laws, there are specially privileged procedures of withdrawal from citizenship for persons who are married to an alien and reside permanently or are about to move to a permanent address abroad; have acquired Hungarian citizenship through a marriage eventually dissolved, and so on.

Under the laws of Yugoslavia, a Yugoslav citizen who has attained majority, born and residing abroad and holding foreign citizenship, may, before attaining the age of twenty-five, renounce his citizenship. A Yugoslav citizen residing abroad and holding foreign citizenship, although born in Yugoslavia, may take advantage of this right as well.

As a general rule, renunciation of citizenship by both parents entails loss of citizenship by the children (upon the parents' application and with the consent of the child; until a certain age, the children's consent is not needed,



viz. until fourteen years in Bulgaria and the GDR, until sixteen years in Poland, and so on).

Withdrawal from citizenship by one parent leads to the change of the citizenship of the child if:

the other parent has agreed to the change of citizenship (Bulgaria, Poland). Should there be no agreement of parents, the citizenship of the child is determined in court;

the child is under the parental authority of the parent who has withdrawn from citizenship (Poland);

the whereabouts of the other parent is unknown or only one parent is living (Rumania).

The laws of some socialist countries envisage loss of citizenship on the following grounds as well:

in Bulgaria—resettlement of a Bulgarian citizen of non-Bulgarian nationality in another country;

in Poland—upon the petition of a Polish woman married to an alien;

in Rumania—adoption of a minor by an alien, should the latter petition for it; if a child acquires foreign citizenship according to the foreign law.

Withdrawal from citizenship of some categories of Soviet citizens was also regulated by some decrees of the Presidium of the Supreme Soviet of the USSR.

Under the Decree of the Presidium of the Supreme Soviet of the USSR of June 22, 1944, Concerning the Right of Transfer to Polish Citizenship of the Servicemen of the Polish Army in the USSR and Persons Assisting It in the Struggle for the Liberation of Poland as well as Their Families, inhabitants of the Western regions of the Ukraine and Byelorussia of Polish nationality who served or had served in the Polish Army in the USSR as well as persons who had rendered active assistance to the Polish Army in its struggle to liberate Poland from the nazi invaders were granted the right of transfer from Soviet to Polish citizenship.[1] This right was also granted to the families of such

[1] *Vedomosti Verkhovnogo Sovieta SSSR*, No. 35, 1944. The action of the Decree was subsequently extended to the inhabitants of the areas transferred to the Lithuanian SSR who had acquired Soviet citizenship in accordance with the Decree of the Presidium of the Supreme Soviet of the USSR of September 7, 1940, On the

persons as well as to families of the servicemen of the Polish Army in the USSR. The right to withdraw from Soviet citizenship was, in this instance, exercised through the option of Polish citizenship.

Declarations of the intention to acquire Polish citizenship were submitted directly or through the Polish Army Command in the USSR to the Commission of the Presidium of the Supreme Soviet of the USSR for the consideration of questions of admission, withdrawal and deprivation of citizenship of the USSR. The Commission included representatives of the Union of Polish Patriots in the USSR.

Under the Agreement between the Government of the USSR and the Provisional Government of National Unity of the Republic of Poland signed on July 6, 1945,[1] persons of Polish and Jewish nationality who held Polish citizenship on September 17, 1939 and who resided on the territory of the USSR were granted the right to withdraw from citizenship of the USSR in accordance with the desire expressed by them, and permitted to resettle in the territory of Poland. The Polish Government undertook to grant to persons of Russian, Ukrainian, Byelorussian, Ruthenian, and Lithuanian nationality the right to withdraw from Polish citizenship in accordance with the desire expressed by them.

Withdrawal from Soviet citizenship followed this procedure:

persons having the right to withdraw from Soviet citizenship who at the time of signing the Agreement were on the territory of the USSR could, during the period of up to November 1, 1945, submit through local government bodies a petition for withdrawal from citizenship of the USSR to the Commission of the Presidium of the Supreme Soviet of the USSR for the consideration of questions of

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Procedure of the Acquisition of Citizenship of the USSR by Citizens of the Lithuanian, Latvian and Estonian Soviet Socialist Republics. Apart from that, the Decree was extended to all Soviet citizens of Polish nationality residing in other areas of the Lithuanian SSR.

Under the Decree of July 6, 1945, persons of Polish nationality mentioned in the decrees of June 22 and July 14, 1944 could, if they so wished, withdraw from Soviet citizenship and resettle in Poland (*Izvestia*, July 7, 1945).

[1] *Izvestia*, July 7, 1945.



admission, withdrawal and deprivation of citizenship of the USSR[1];

persons having the right to withdraw from Soviet citizenship, who at the time of signing the Agreement were on the territory of Poland or on the territory of other states, could submit, during the period of up to November 1, 1945, a petition for withdrawal from citizenship of the USSR through Soviet embassies or consulates.

The procedures for withdrawal from Polish citizenship were roughly the same.

The Government of the USSR and the Government of the Polish People's Republic, guided by the desire to further strengthen Soviet-Polish friendship, concluded in March 1957 an Agreement concerning a portion of persons of Polish nationality residing on the territory of the USSR who had not taken advantage of the right to repatriation on the basis of the earlier Soviet-Polish agreement.[2]

The Agreement granted the right of repatriation to

(a) persons of Polish nationality who held Polish citizenship as of September 17, 1939;

(b) children of persons of Polish nationality who held Polish citizenship on September 17, 1939, who were born after September 17, 1939 and who had no close relatives in the Soviet Union, but had relatives in the Polish People's Republic or about whose repatriation Polish authorities petitioned.[3]

In accordance with the Agreement, the Government of the USSR permitted the departure to the Polish People's Republic of the spouses, children or parents of the repatriates who had a common household with the repatriates, even if these family members had not held Polish citizenship on September 17, 1939 and were not persons of Polish nationality. Persons of Polish nationality who were repatriated were recognised from the moment of their departure

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[1] Under the Supplementary Protocol to the Agreement of July 6, 1945, the period for submitting petitions on withdrawal from Soviet citizenship was extended until January 1, 1946 (*Izvestia*, November 15, 1945).

[2] *Vedomosti Verkhovnogo Soviela SSSR*, No. 16, 1957.

[3] All provisions of the Agreement concerning persons of Polish nationality extended also to persons of Jewish nationality who held Polish citizenship on September 17, 1939.

from the USSR as having withdrawn from Soviet citizenship and acquired Polish citizenship upon arriving in the Polish People's Republic. Members of the families of repatriates who were not persons of Polish nationality and had citizenship of the USSR could retain Soviet citizenship or withdraw from it in accordance with the desire they expressed in officially registering their exit papers. Persons who withdrew from citizenship of the USSR acquired Polish citizenship upon arriving in Poland.

This process of withdrawal from Soviet citizenship is distinctive in that it treated repatriation as option for citizenship.

Withdrawal from Soviet citizenship also followed from the Agreement between the USSR and Czechoslovakia Concerning the Right of Option and Resettlement Respectively of Citizens of Czech and Slovak Nationality Residing in the USSR on the Territory of the Former Volhynia Province and of Czechoslovak Citizens of Ukrainian, Russian and Byelorussian Nationality Residing on the Territory of Czechoslovakia, signed on July 10, 1946.[1]

The Agreement, which reflected the friendly relations established between the two countries, promoted the solution of a burning question in national relations. Owing to a number of concrete historical causes, there were on the territory of Czechoslovakia groups of persons of Ukrainian, Russian and Byelorussian nationality, many of whom wished to resettle in the Soviet Union. In turn, on the territory of the USSR, in the former Volhynia Province, there were persons of Czech or Slovak nationality who wished to resettle in Czechoslovakia. The Soviet Government agreed to grant the Soviet citizens of Czech or Slovak nationality residing on the territory of the former Volhynia Province the right to opt for Czechoslovak citizenship and to resettle in Czechoslovakia. In accordance with the Decree of the Presidium of the Supreme Soviet of the USSR of October 31, 1946, Concerning the Withdrawal from Soviet Citizenship of Persons of Czech and Slovak Nationality Resettling from the USSR to Czechoslovakia and Acquisition of Soviet Citizenship by Persons of Russian, Ukrainian and Byelorussian Nationality Resettling from Czechoslovakia to the USSR, persons of Czech and Slovak nationality and their families resettling from the USSR to Czechoslovakia on the basis of the Agreement of July 10, 1946 were recognised as having withdrawn from Soviet citizenship from the moment of their departure from the USSR.[1] The Government of the Czechoslovak Republic granted the Czechoslovak citizens of Ukrainian, Russian or Byelorussian nationality residing on the territory of Czechoslovakia the right to opt for Soviet citizenship and to resettle in the USSR. These persons acquired Soviet citizenship through option, and under the Decree of the Presidium of the Supreme Soviet of the USSR of October 31, 1946 they acquired it since the moment of their arrival in the USSR.

The Agreement between the USSR and Czechoslovakia of July 10, 1946 contained a rule whereby the right to opt for Soviet or Czechoslovak citizenship was granted to persons who had attained eighteen years of age.

In Soviet legislative and treaty practice, withdrawal from citizenship through option is a major legal guarantee and instrument of ensuring the right of nations to self-determination. This explains the fact that the aforementioned decrees and international agreements base option on nationality.

In difficult international circumstances, these acts promoted friendship and co-operation between nations and built up the national sovereignty of the Soviet Union and of the fraternal socialist countries.

The continually progressing international relations and the needs of Soviet state development make it necessary to enact laws on withdrawal from Soviet citizenship. In this respect it is important to take into account the specific interests of national groups residing in the Soviet Union. One example of it is the Decree of the Presidium of the Supreme Soviet of the USSR of August 30, 1956, which laid down the procedure of the withdrawal from Soviet citizenship of persons of Spanish nationality who had resided in the USSR from 1936 to 1940 and left for Spain. Such persons were considered to have withdrawn from

[1] *Izvestia*, July 11, 1946.

[1] *Vedomosti Verkhovnogo Sovieta SSSR*, No. 40, 1946.

Soviet citizenship from the moment of their departure from the USSR. Soviet citizens not of Spanish nationality, married to Spaniards and leaving the Soviet Union together with their spouses, were also considered to have withdrawn from Soviet citizenship from the moment of their departure from the USSR, provided that these persons had submitted appropriate applications.[1]

In capitalist countries, loss of citizenship may follow (1) upon the petition of the person concerned, (2) by reason of actions performed by a citizen, and (3) at the initiative of state agencies.

The laws of some capitalist countries draw no clear line between loss of citizenship due to voluntary renunciation and that effected on the initiative of state agencies.

In Britain, any citizen of the United Kingdom and colonies who is of age and of sound mind may file a declaration renouncing his citizenship. Such declarations are not accepted only in the event a war is in progress in which Great Britain takes part.

A person who becomes a citizen of the United Kingdom and colonies by naturalisation or registration may be deprived of his citizenship for fraud, false representation or material concealment in procuring registration or naturalisation; disloyalty, before or after the naturalisation; unlawful communication with or assistance to an enemy in time of war; conviction and sentence in any court of certain serious crimes punishable with no less than twelve months of imprisonment within five years of the naturalisation; continuous residence in foreign countries, except if in crown service or registering annually at the British consulate for seven years after the granting of the certificate.

In Italy, loss of citizenship may follow in a manner established by the law. Italian citizenship may be lost owing to the acquisition of foreign citizenship and resettlement beyond the borders of Italy as well as in the event of renunciation of Italian citizenship even if not linked to

[1] A. I. Denisov, M. G. Kirichenko, *Sovietskoye gosudarstvennoye pravo* (Soviet State Law), Moscow, 1957, p. 139.



the acquisition of foreign citizenship. A person loses citizenship also if he, being in the service of a foreign state, continues in it despite the demands of the Italian Government. A woman marrying an alien loses Italian citizenship if by the law of the husband's country she acquires his citizenship upon marrying.

Under Italian laws, a person who has dual citizenship and who was born and resides permanently abroad (upon attaining majority) may renounce his citizenship. There is a rule in Italy, effective since 1926, that a citizen who committed abroad or aided and abetted an action prejudicial to public order or the country's interests is liable to be deprived of Italian citizenship.

Under US laws, persons who aquired citizenship at birth or by naturalisation may lose it on the following grounds: being naturalised in a foreign country[1]; taking an oath of allegiance to a foreign country; serving in the armed forces of a foreign country without permission from State Secretary and Defence Secretary; holding any government job in a foreign country connected with the acquisition of citizenship of that country or with taking an oath of allegiance; taking part in elections or a plebiscite in a foreign country; renouncing American citizenship before a diplomatic or consular official in accordance with the requirements prescribed by the State Secretary; a written application on withdrawal from citizenship, to be submitted and considered in the form established by the Attorney-General (the application may be rejected if the United States is at war or if withdrawal from citizenship is prejudicial to national security); deserting from the armed forces in time of war; committing high treason or attempting a coup; evading the draft in time of war or a state of emergency proclaimed by the President.

Loss of citizenship may follow also as a consequence of denaturalisation. Naturalisation may be revoked if it was induced by fraudulent misstatements as well as if the

[1] A person under 21 whose parents are naturalised in a foreign country or who becomes a foreign citizen upon application by his guardian or legal representative does not lose American citizenship if he resettles in the United States before attaining the age of twenty-five years.

person concerned should refuse to testify before the House of Representatives Committee on Un-American Activities during ten years following naturalisation.

Naturalisation may be revoked during five years, should it be proved that the person concerned is identified with certain proscribed organisations. Support of or membership in such organisations is considered to be evidence that the person concerned is neither attached to the principles of the Constitution of the United States nor well disposed to the good order and happiness of the United States. Naturalisation may also be revoked if the person concerned takes up permanent residence in another country during the period of five years upon naturalisation.

A person holding dual citizenship at birth and seeking to take advantage of the privileges following from foreign citizenship loses American citizenship if he has resided for at least three years after attaining twenty-two years of age on the territory of the respective foreign state. Citizenship is not lost if during three years such person takes before a diplomatic or consular official an oath of allegiance to the United States or in the event his residence abroad is due to his service for the United States or his family circumstances.

In France, persons having attained majority who acquire foreign citizenship of their own free will and persons conducting themselves as if they were citizens of another country lose citizenship under a government decree issued in each individual case. Persons exempted from military service and women married to aliens who made an appropriate declaration prior to their marriage may withdraw from citizenship without special permission.

Persons residing abroad for a long time or serving in a foreign army and failing to resign within fifteen days following a request to do so lose French citizenship by decision of a court.

Under French laws, a certain group of French-born citizens may renounce their citizenship if they can prove that they are foreign citizens by descent. Such persons cannot renounce French citizenship if during the period of six months fixed by the law for option their parents acquire French citizenship or if such persons join the French Army.



In the Federal Republic of Germany, loss of citizenship follows its renunciation by a person residing in the FRG or acquisition of foreign citizenship by a person residing permanently abroad.

The range of persons who may renounce their citizenship is limited by the law. Officials, judges, servicemen and others in government employ, as well as persons liable to military service, cannot take advantage of this right pending consent of the Federal Defence Minister or an authorised agency.

A person residing permanently abroad and acquiring foreign citizenship need not lose citizenship if he has the permission of competent agencies.

## Chapter 8

### CITIZENSHIP AS A PREREQUISITE OF SOVIET CITIZENS' LEGAL STATUS

Citizenship as a legal fact is most immediately related to the legal status of the individual in society and the state. In the present Constitution of the USSR, "The State and the Individual" section opens with a chapter dealing with citizenship of the USSR. The section consists mainly of articles setting forth the principles and specific rules of the legal status of Soviet citizens. As a specifically determined legal bond between person and state, citizenship is called upon to influence decisively the very nature of the legal status of a citizen. Citizenship is a concentration, as it were, of the more essential legal bonds existing between persons, society and the state while the fundamental rights and duties of citizens which serve to give concrete expression to these bonds are the main legal consequence of the fact itself of holding citizenship.

It must, however, be stressed that citizenship is an independent legal category which is a prerequisite and not an element of a citizen's legal status.[1]

There is a close link between citizenship and citizens' legal position (status), since citizenship provides the necessary precondition of their legal position. It is not fortuitous that the Preamble of the new Citizenship of the USSR Act characterises the legal position of Soviet citizens in concentrated form as follows:

"Citizens of the USSR possess in full the socio-economic, political, and personal rights and freedoms proclaimed and guaranteed by the Constitution of the USSR and Soviet statutes.

"The Soviet socialist state of the whole people protects

[1] See M. Mikhailova, *Pravno polozheniye na lichnostta pri sotsializma* (Legal Status of the Individual under Socialism), Sofia, 1972, p. 87.



the rights and freedoms of citizens of the USSR, and ensures their equality in all spheres of economic, political, social, and cultural life."

The relation between the state and the citizen, viewed very generally, is quite definitely that between the exponent of authority who can exercise authority and apply force, and the subject who must submit to that authority. The unequal position of the parties to the relation, the pre-eminence of the exponent of authority, should not be viewed in a purely negative light, regardless of the concrete social and historical circumstances from which the relation springs and which make it necessary.

Genuine individual freedom is inseparable from the socialist remaking of society. Freeing the individual from exploitation, from capitalist economic and political oppression, and involving him in public activities is the sole realistic basis on which authentic individual freedom can exist. Under socialism, the private and public interests of working people are one as the successful development of socialist society is at the basis of the successful development of every individual, while the development of the individual, his intellectual and social growth and the all-round unfoldment of his talents are indispensable to the further successful development of society itself.

Pre-socialist political thought engendered a tradition, as it were, to view the relation between the state and the citizen as an eternal and insoluble conflict between state authority embodying *diktat* and various forms of coercion, on the one hand, and the freedom of an individual, a citizen, on the other.

Is the idea of the individual's subjection to the state an absolute one? Can they co-operate and, if so, how? These questions continue to be asked today while the answers to them are as diverse and conflicting as ever.

To be noted in this connection is above all the objective character of the establishment of the relation between citizen and state in a class society. The latter objectively needs to have authority for its own organisation, normal functioning and even self-preservation. On the other hand, state authority cannot exist and generally becomes meaningless without citizens, without a population consisting above all of citizens.

In formulating some general statements characterising the relation between citizen and state, attention must be drawn to the following point of fundamental significance, viz. that these relations are diametrically different depending on the nature of the social and state system, on what classes exercise power and what goals they pursue in administering society, i.e. they are diametrically different depending on the type of state. In the exploiting types of state, such as slave, feudal and capitalist societies, the individual—and so the citizen—is principally the object of state authority, but in the socialist state he is above all the subject of state administration immediately involved in the exercise of state authority itself.

On this distinction depends also the definition of the types of citizenship. Genuine citizenship quite obviously exists where the individual as a citizen is part of the subject of authority. This description of a citizen, dating back to the great French Enlighteners of the 18th century and above all to Jean Jacques Rousseau, is valid to this day. More, it has acquired its authentic meaning in socialist society alone.

Socialist society and the socialist state are, by their very nature, called upon to satisfy in an ever greater degree the vital interests of citizens and to ensure, safeguard and guarantee a scrupulous observance of their democratic rights and freedoms. Relations between the state and the person under socialism rest on the recognition by the state of the social and ethical value of the individual and individual rights, on the one hand, and on the recognition by the individual of the prestige of the state and law as instruments of social progress and safeguards of individual freedom, on the other.

In the socialist state, there is no conflict between the fact that a person is continually subjected to the influence of sovereign government, i.e. the government exercising supreme authority over society, and the rights and duties of that person. Both aspects of this situation of a citizen are interdependent. On the one hand, it is precisely because one is in the sphere of sovereign influence of the socialist state that one enjoys a certain legal status involving a wide range of rights and duties. On the other hand, the legal status of a citizen in a socialist state provides for his



effective participation in the very government to which he has to submit. In this way, the estrangement between society and the state, between citizen and government placed above him, inherited by socialism from the earlier social formations, is gradually overcome. This complex process embraces a relatively long period of history. As for state authority, it will be replaced by communist public self-administration under which all estrangement between the individual and the still necessary non-political, public authority will be completely and finally overcome.

Under socialism, there are economic and political factors which enhance the role played by the state in economic and social relations. This broadens the channels through which the relations between the state and the citizen are maintained. As socialist democracy develops, the social content of these relations continually increases.

Relations of vital significance to every citizen stem directly from the fact that the socialist state is the owner of the basic means of production and organiser of production on a nationwide scale. The socialist state is the major employer, utilising citizens' labour energy in a planned fashion. Separate structural units of the state (agencies, organisations and enterprises) take part in legal labour relations with the citizens. The socialist state has charge of national income, of an enormous stock of material and spiritual goods. Wages in socialist society are the main source of satisfying the material and cultural needs of the working people. Through its wage policy and the distribution of the social funds from which social insurance benefits, pensions, allowances, etc. are paid, the state regulates and controls personal incomes, so as to reduce the difference in income between the various population groups.

Besides the main sphere of the social life, economic-legal relations bind citizens with the state also in the field of culture and education, services, and so on. The possibilities of exerting legal influence on the individual sphere of citizens' life (marriage and family relations, the upbringing of children, etc.) are also quite considerable.

Being a sovereign does not, nevertheless, make the state a subject absolutely free to do with its citizens as it likes legally and otherwise. First of all, the ability of a state to have rights and duties is objectively limited by the mate-

rial conditions of the society. Without risking the loss of its support in the social-class basis of society and its own viability, a state cannot introduce important measures which are at odds with its class and political nature. As concerns a socialist state, it can impose neither unrealistic legal demands nor unrealistic obligations on its citizens. The legal possibilities of a socialist state are objectively limited by requirements following from its ideological and political principles and ethical rules. For the same purpose, the state establishes a system of legal and political restrictions and rational, scientific and stable principles of relations with citizens. It provides safeguards against abuses of authority by individual officials distorting the nature of such relations, and so on.

In socialist society, the state, concentrating in itself an immense social force, is the guarantor of individual freedom.

As is known, Marxism-Leninism rejects the notion of absolute individual freedom. Man's freedom, all of his thoughts and actions are in the final analysis determined by the economic, political, ideological and other conditions of the life of society. One cannot live in society and be free from society. Freedom is conceived in Marxism as knowledge and remaking of nature and society in the interest of progressive development of society and its members. Emancipation of the individual from exploitation, from economic and political oppression, his greatest possible involvement in the management of public and state affairs are the groundwork of genuine freedom of the individual.

This conception of freedom never complied with anarchic discretionary behaviour or anti-social licence, or with Robinsonian withdrawal into oneself when a person keeps aloof from social life and common interests. It is, therefore, not independence from society that constitutes freedom of the individual, but his constant co-ordination of his actions in relation to society and its vital interests. The real freedom of the individual does not lie in his desire to put himself outside of society and the rule of law, but in a clear conception of his role in society and responsibility to it, in his respect for the laws—if it agrees with his ideals and higher objectives.



The most important expression and guarantee of freedom of the individual in society and of a citizen in the state lies in socialist democracy. This factor is essential to the understanding of the relations between citizen and state.

Socialism restores the natural social proportion between the social character of production and the forms of distribution. By providing economically for genuine freedom of the individual, socialism produces objective prerequisites of the people's sovereign power. And by establishing the people's sovereign power, it creates the objective prerequisites of individual freedom.

Under socialist democracy, conceived in its authentic sense, namely as popular government, individual freedom is the outcome of the fullness of power—i. e. sovereignty—of the people, and sovereignty is the outcome of genuine freedom of the individual. One cannot exist without the other.

Democracy is the form of the socialist state. Concretely, this finds expression above all in the establishment of unity between the state, society, and the people, between the state, individual, and citizen.

Legalised freedom presupposes both for the state and the individual the duty of performing or abstaining from certain actions. The gist of the answer to the problem of achieving a socially just combination of the social and the individual spheres under socialism lies precisely in a rational and realistic distribution—and such as is required objectively by society for its own growth—of rights and duties between the state and the individual.

The state mediates between a man and his freedom. Everything the state does in the field of citizens' freedom—political freedom above all—goes to show that the state cannot be merely a neutral agent in this process. Before they can be expressed as laws, a citizen's rights and duties must be reflected in the light of the interests of the ruling class. For this reason, the state, as the ruling subject of law, can either further citizens' political activity as much as possible under existing conditions, or it can considerably restrict a citizen's rights and freedoms.

The exploiting state has never encroached on citizens' duties. On the contrary, it did not hesitate to increase the proportion of duties and all sorts of obligations involved

in the status of a citizen. As for rights and freedoms, the exploiting state keeps a watchful eye on them and is always ready, whenever the class struggle reaches a certain pitch, to restrict or withdraw them altogether as irrelevant to a citizen's legal status.

The pre-eminence of state authority is realised through a system of legal rules whose principal characteristics are as follows: (1) they are a direct issue of state authority and an embodiment of its policy; (2) whenever necessary, they are enforced by the state through its apparatus of coercion; (3) they extend to society at large and are of a universal compulsory character.

Rules of law express the commands of the ruling class which can regulate through them the conduct of citizens and thus administer society. For the same reason, rules of law appear simultaneously as political and legal imperatives. The interest of the ruling class, worked into rules of law, finds in them its fullest and most effective realisation.

Law is the principal instrument whereby the state carries out its policy, purposes and functions, and actively influences the overall growth of relations in society. In organising and ordering social relations in the interest of the ruling class or of society as a whole, expressing the will of the ruling class (and in a state of the whole people, the will of the whole of society), the state resorts to law to invest this will with a universal and binding character.

The political-legal aspect of the problem of relations between the individual and society appears most clearly in the constitutional institution of the fundamental rights and freedoms of citizens. Citizens' rights and duties written down in the Constitution and other laws of the socialist state regulate the vitally important relations between the individual and society, the state and the citizen. These relations are based on socialist public property and are determined by the nature of the Soviet social and political system.

Citizens' rights and freedoms in Soviet socialist society are, very generally, as follows: the right of citizens to be provided with the necessary material conditions of existence as well as to have their social and cultural needs satisfied (socio-economic and cultural rights); the right to take part



in the management of the state and society (political rights); the right to be protected from offences affecting the life, liberty and honour of the individual (individual freedoms). Classification of the constitutional rights and freedoms of Soviet citizens into socio-economic rights, political rights and freedoms, and personal freedoms stems from there being three kinds of social relations in socialist society, viz. the relations between the state and citizens in the socio-economic and cultural field, in the political field, and in the field of protective legal activity of the socialist state to protect the life, liberty and honour of Soviet citizens. These three principal kinds of relations between citizens and the state reflect most fully the actual situation of the individual, and form the actual socio-economic, political and legal basis of his legal status in Soviet society.

An important place among the fundamental rights and freedoms belongs to the socio-economic rights, viz. the right to work, rest and leisure, health protection, maintenance in old age, in sickness, and in the event of complete or partial disability or loss of the breadwinner, the right to housing and education, and the right to enjoy cultural benefits.

A person's real freedom indispensably depends on a guaranteed right to work, proclaimed by the Constitution to be among the fundamental rights of Soviet citizens. Article 40 of the Soviet Constitution says: "Citizens of the USSR have the right to work (that is, to guaranteed employment and pay in accordance with the quantity and quality of their work, and not below the state-established minimum), including the right to choose their trade or profession, type of job and work in accordance with their inclinations, abilities, training and education, with due account of the needs of society.

"This right is ensured by the socialist economic system, steady growth of the productive forces, free vocational and professional training, improvement of skills, training in new trades or professions, and development of the systems of vocational guidance and job placement."

Abolition of private ownership of the means of production, the establishment of the socialist economic system, economic planning and the steady growth of the productive forces

have made it possible for every person to exercise his right to work. This right is also legally guaranteed. The legal guarantees of this right are set forth at length in Soviet labour laws. Measures protecting citizens from arbitrary dismissal from work, and so on, have been enacted and are rigidly enforced.

Soviet citizens' right to work, which is fixed in the law and reliably guaranteed, not only fully corresponds to the right to work proclaimed in the International Covenant on Economic, Social and Cultural Rights,[1] but also considerably exceeds it both in volume and content. Every Soviet citizen enjoys ample opportunity to choose a job, in any section of the national economy, in accordance with his occupation and skills.

Industrial, office and professional workers exercise their right to work by concluding a labour contract with the factory, office or organisation on the basis of free expression of will (Art. 8 of the Fundamentals of Labour Legislation of the USSR and the Union Republics), and collective farmers, by voluntarily joining collective farms.

The law forbids anyone to be refused employment without good reason. The Soviet Constitution does not allow any direct or indirect limitation of rights or establishment of direct or indirect privileges at employment, depending on sex, race, nationality or attitude to religion.

Factory and office managements are forbidden to have employees perform work not stipulated by the labour contract. Transfer to another job is possible only with the consent of the person concerned (Arts. 12 and 13 of the Fundamentals of Labour Legislation).[2]

[1] Article 6 of the Covenant proclaims: "1. The States Parties to the present Covenant recognise the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

"2. The steps to be taken by a State Party to the present Covenant to achieve the full realisation of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual" (*Yearbook on Human Rights for 1966*, United Nations, N.Y., 1969, p. 438).

[2] *Fundamentals of Legislation of the USSR and the Union Republics*, pp. 95-96.



A worker may cancel a contract concluded for an indefinite period for any reason, at two weeks' notice; the management, on the other hand, may cancel a labour contract only for a limited number of reasons mentioned in the law and, as a rule, with the preliminary consent of the trade union.

No one may dismiss a citizen from his job other than on legal grounds. If this right is violated, the citizen may seek protection from the trade union or a people's court which are in duty bound to restore his rights as soon as possible (Arts. 16, 17 and 18 of the Fundamentals of Labour Legislation).[1]

In the Soviet Union, a manpower balance and a composite plan of the size of labour force are drawn up with a view to establishing the likely demand for manpower in industrial and territorial terms. This demand is taken into account in drafting plans for the training of skilled workers and specialists with a higher and secondary education, and plans for the voluntary recruitment of working people for their trades and professions at enterprises and organisations, by concluding labour contracts with them. Such recruitment is conducted in the interests of both citizens and the establishments in need of workers. The population is notified about the vacancies through special agencies in charge of organised recruitment.

This procedure was established in order to provide citizens with jobs, preclude unemployment, and make it easy to find a job, as well as in order to give working people a wide choice of jobs such as they may like and be able to take up.

In socialist society, everyone must work. No one may shift his share of work to somebody else and live on an unearned income. Work is an obligation and moral duty of every able-bodied person. Participation in socially necessary work, according to a person's free choice, is regarded as the performance of this obligation. The latter is, in effect, carried out through the right to work by means of concluding a labour contract.

The right to work is closely linked with guaranteed payment for work, according to its quantity and quality.

[1] *Ibid.*, pp. 97-99. For more detail see R. Livshitz, V. Nikitinsky· *An Outline of Soviet Labour Law*, Progress Publishers, Moscow, 1978,

The Fundamentals of Labour Legislation of the USSR and the Union Republics (Art. 36) state: "The USSR Constitution stipulates that the labour of the factory and office workers shall be remunerated according to quantity and quality. No reductions on pay shall be allowed for reasons of sex, age, race or nationality."[1]

Socialism has not yet created the necessary material prerequisites for the distribution of foodstuffs and other material and spiritual goods according to need. So it applies the only possible and just principle, from each according to his ability, to each according to his work.

In the conditions of the socialist planned economy, wage rates are regulated centrally by the state and the trade unions on a national scale. This assures equal pay for equal work.

The paramount purpose of the socio-economic policy pursued by the Soviet state is to achieve a steady systematic rise in the living standards, and in particular to increase wages and salaries with the growth of labour productivity and the national income.

Bitween 1960 and 1975, per capita real incomes approximately doubled, while the total volume of material benefits and services increased approximately 2.4 times. In the tenth five-year period (1975-1980), wages and salaries will increase by 16-18 per cent, rising to at least 170 rubles a month in 1980, and collective farmers' incomes from social production are to rise by 24-27 cent.[2]

Monthly wages and salaries must not be lower than a minimum fixed by the state (Art. 36 of the Fundamentals of Labour Legislation). This minimum is systematically raised (it has been raised four times since 1957) with a view to levelling up the living standards of different categories of working people.

In assessing the value of minimum wages (they amounted to 70 roubles a month in 1977), it must be considered that currently at least a quarter of a family income consists of allowances and benefits paid from the social consumption funds, not counting the income derived from personal subsidiary small-holdings. The proportion of families in which both wage-earners receive minimum wages is very small, being less than 10 per cent of the total of families in which at least one member receives minimum wages.

[1] *Fundamentals of Legislation of the USSR and the Union Republics*, p. 104.

[2] See *Documents and Resolutions. XXVth Congress of the CPSU*, Moscow, 1976, pp. 49, 127.



The social consumption funds, which furnish the money for social insurance allowances and pensions, accommodation at sanatoriums and rest homes, and free medical assistance, play an increasing role in the life of Soviet people. Money from the social consumption funds is also channelled to the building of houses, improvement of cultural and everyday amenities, and upkeep of children at preschool establishments. Rent and charges for utility services are exceedingly low, the state paying the bulk of expenses on the maintenance of housing.

The benefits and allowances to be received by the population from the social consumption funds during the tenth five-year period will grow by 28-30 per cent, amounting to at least 115,000 million rubles in 1980. A number of new social measures will be financed out of these funds. One of these will be to afford women partly paid leave to attend to their infants until they are one year old.[1]

One of the main labour rights of industrial and office workers as established in Art. 2 of the Fundamentals of Labour Legislation is their right to healthy and safe conditions of work.

To ensure such conditions is the responsibility of the management. The latter must introduce modern safety techniques preventing industrial accidents, and must ensure high standards of industrial hygiene to prevent the incidence of occupational diseases (Art. 57 of the Fundamentals). The Soviet state pays great attention to industrial safety, allocating large sums for the introduction of appropriate measures. The Soviet Union is one of the countries which boast the lowest industrial injury and morbidity rates.

The Fundamentals of Labour Legislation of the USSR and the Union Republics (Art. 55) stipulate privileges in promotion which depends principally on proficiency and seniority.

To prepare young people for work and for the choice of a trade vocational guidance is provided through job training

[1] *Ibid.*, p. 127.

and vocational guidance programmes for secondary school pupils, combining several schools, as well as through inter-departmental vocational guidance councils sponsored by public education authorities.

Thus, the conditions under which Soviet citizens work fully conform to Art. 7 of the International Covenant on Economic, Social and Cultural Rights.[1]

The right to rest and leisure (Art. 41 of the Constitution of the USSR) is inseparable from the right to work.

The constitutional right of Soviet citizens to rest and leisure is ensured by the establishment of a working week not exceeding 41 hours for workers and other employees, a shorter working day in a number of trades and industries,[2] and shorter hours for night work; by the provision of paid annual holidays, weekly days of rest, extension of the network of cultural, educational and health-building institutions, and the development on a mass scale of sport, physical culture, and camping and tourism; by the provision of neighbourhood recreational facilities, and of other opportunities for rational use of free time.

Article 42 of the Constitution proclaims the right of Soviet citizens to health protection. This right is ensured

[1] The Article runs: "The States Parties to the present Covenant recognise the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

"(a) Remuneration which provides all workers, as a minimum, with:

"(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work.

"(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant.

"(b) Safe and healthy working conditions;

"(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

"(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays" (*Yearbook on Human Rights for 1966*, p. 438).

[2] Under Arts. 21 and 22 of the Fundamentals of Labour Legislation, the working week may not exceed 41 hours (36 hours for arduous trades). Certain categories of workers (e.g. doctors and teachers) and teenagers work shorter hours under the law. Working overtime and on holidays is prohibited as a rule. Work done on holidays is paid for at a double rate (Arts. 27, 30, 31 and 41 of the Fundamentals of Labour Legislation).



by free expert medical care provided by state health institutions; by extension of the network of therapeutic and health-building institutions; by the development and improvement of industrial safety and hygiene; by carrying out broad prophylactic measures; by measures to improve the environment; by special care for the health of the rising generation, including prohibition of child labour, excluding the work done by children as part of the school curriculum; and by developing research to prevent and reduce the incidence of disease and ensure citizens a long and active life.

In the Soviet Union, health protection accounts for 6.3-6.7 per cent of all allocations made from the State Budget.

One example of the continuous growth of the Soviet health system is the number of hospital beds. It increased from 791,000 in 1940 and 2,226,000 in 1965 to more than 3,000,000 in 1977.

The country has 25,000 hospitals, 36,000 out-patient clinics and polyclinics designed for 2,000 million visits a year. In 1970-1975, hospitals with more than 346,300 beds were built. There are, besides, thousands of first-aid stations as well as pharmacies and polyclinics. Many of the latter two are arranged on the premises of industrial establishments. The number of persons engaged in the Soviet health system amounts to over 5.5 million, including 865,000 doctors.

The number of doctors per 10,000 of urban or rural population increased in 1976 by 27 and 52 per cent, respectively, compared with 1965. The Soviet Union has the highest medical personnel-to-population ratio in the world.

One of the most important socio-economic rights of Soviet citizens is the right to maintenance in old age, in sickness, and in the event of complete or partial disability or loss of the breadwinner (Art. 43 of the Constitution of the USSR).

This right is ensured by social insurance of workers and other employees and collective farmers; by allowances for temporary disability; by the provision by the state or by collective farms of retirement pensions, disability pensions, and pensions for loss of the breadwinner; by providing employment for the partially disabled; by care for

the elderly and the disabled; and by other forms of social security.[1]

In the USSR, all workers and other employees are subject to obligatory state social insurance, whether they work at state-owned or public enterprises. Collective-farm experts and executives (machine operators, mechanics and other experts, heads of collective farms, and so on) enjoy social insurance on the same terms as workers and other employees. Social insurance of the bulk of collective-farm members is financed from the centralised all-Union social insurance fund for collective farmers, which is formed from obligatory contributions made by the collective farms without anything being deducted for the purpose from collective farmers' incomes.

Soviet pensions make up a high proportion of the earnings. A retirement pension,[2] for instance, may be 50 to 100 per cent of the earnings made before retirement. The lower the earnings, the higher the percentage.

During the ninth five-year period (1970-1975), 24 million persons had their pensions increased. In the tenth five-year period (1976-1980), the minimum pensions will be raised. Mothers of large families will draw pensions on still more privileged terms.

Article 44 of the Constitution of the USSR states that Soviet citizens have the right to housing.

This right is ensured by the development and upkeep of state and socially-owned housing; by assistance for co-operative and individual house building; by fair distribution, under public control, of the housing that becomes available through fulfilment of the programme of building well-appointed dwellings, and by low rents and low charges for utility services. Citizens of the USSR are simultaneously bound to take good care of the housing allocated to them.

The giant growth of Soviet housing, which effectively guarantees this constitutional right, may be seen from the

[1] See M. Zakharov, R. Tsivilev, *Social Security in the USSR*, Progress Publishers, Moscow, 1978.

[2] Retirement pensions are granted to men who have attained the age of 60 and have worked at least 25 years; and to women who have attained the age of 55 and have worked at least 20 years. Pensions are granted on privileged terms to miners, textile workers, those working in the Far North, and so on.



following figures. During the sixth five-year period, state and co-operative organisations produced 45 million square metres of housing a year; 60 million in the seventh five-year period, and 70 million in the eighth; and in the ninth five-year period, 80 million square metres of housing was constructed. Apart from that, for some years past, industrial and office workers have been building 13 million, and collective farms, collective farmers and rural intellectuals, 14 million square metres of housing a year at their own expense and with government credit. Currently, a total of 110 million square metres of new housing is constructed every year, 76 million of it in cities and towns.

Under the five-year plan for 1976-1980, a total of 545-550 million square metres of housing will be built. Better houses are constructed, the flats are more comfortable, the layout is improved. The state takes measures to boost housing co-operatives, rendering every possible assistance to the construction of houses on a personal basis in townships and villages.

The Constitution of the USSR gives Soviet citizens the right to education (Art. 45).

This right is ensured by free provision of all forms of education, by the institution of universal, compulsory secondary education, and broad development of vocational, specialised secondary, and higher education, in which instruction is oriented toward practical activity and production; by the development of extramural, correspondence and evening courses; by the provision of state scholarships and grants and privileges for students; by the free issue of school textbooks; by the opportunity to attend a school where teaching is in the native language; and by the provision of facilities for self-education.

The Soviet education system is growing rapidly. More than 93 million persons—one in three—are getting some kind of education. The Soviet Union has 859 institutes of higher learning and 4,303 specialised secondary schools with a total student body of 9.6 million. Before the Revolution, Russia had 105 higher and 450 secondary educational institutions attended altogether by 181,000 students. Three and a half million teenagers of both sexes are currently being trained at the Soviet vocational schools. Education at all levels is free, 77 per cent of day college students and

72 per cent of specialised secondary school students drawing monthly state grants.

The Constitution of the USSR affords citizens the right to enjoy cultural benefits (Art. 46).

This right is ensured by broad access to the cultural treasures of their own land and of the world that are preserved in state and public collections; by the development and fair distribution of cultural and educational institutions throughout the country; by developing television and radio broadcasting and the publishing of books, newspapers and periodicals, and by extending the free library service; and by expanding cultural exchanges with other countries.

Under the current five-year plan, the role of socialist culture and the arts in the ideological, political, moral and aesthetic education of Soviet people will be further enhanced. The material facilities of cultural establishments will be built up and the network of public libraries and clubs and of public lecture centres enlarged. The work of museums will be improved, and so will the protection of monuments of culture and history and dissemination of information about them. Television and radio broadcasting will be further developed, colour television and stereophonic radio broadcasting will be introduced on a larger scale, and so on. The cinema service has been notably improved, more cinemas have been built, and the material facilities of the film industry have been expanded.

Society's solicitude for man under socialism—for his work, material well-being, everyday life, education, cultural growth and health—is essential to the development and flowering of socialist society itself. After all, the contribution made by each member of society to the building of communism depends decisively on how fully every citizen will be able to project himself not only as a physically and intellectually distinctive individual, but also as a Soviet citizen exercising certain rights and having certain obligations to society. Society and the state have a right to expect able-bodied citizens to be active in production, on which the very functioning of society depends, and contribute as much as they can to the growth of public wealth. Simultaneously, socially useful work is the principal sphere in which the creative abilities and lofty moral



qualities of a Soviet citizen are formed. It is just such work that shows what kind of person one really is.

The rights and freedoms granted to Soviet citizens are a legal means toward the satisfaction of their continually growing material and cultural interests and requirements. On the other hand, such duties as the duty of every able-bodied citizen to work conscientiously in his chosen, socially useful occupation, and strictly to observe labour discipline (Art. 60); the duty to preserve and protect socialist property, combat misappropriation and squandering of state and socially-owned property and to make thrifty use of the people's wealth (Art. 61); the duty to safeguard the interests of the Soviet state, and to enhance its power and prestige (Art. 62); the duty to protect nature and conserve its riches (Art. 67); and to care for the preservation of historical monuments and other cultural values (Art. 68) serve to draw all members of socialist society into building up their Soviet state.

The socialist system has made politics a public concern. Lenin considered the involvement of literally all members of society in vigorous political and social activity to be decisive to the development of socialist democracy. He envisaged the "transition *through* the Soviet state to the gradual abolition of the state by systematically drawing an ever greater number of citizens, and subsequently *each and every* citizen, into direct and *daily* performance of their share of the burdens of administering the state".[1]

The character of relations between citizens and the state in the Soviet Union is seen most clearly from the constitutional system of the fundamental social and political rights and freedoms, viz. the right to take part in the management and administration of state and public affairs and in the discussion and adoption of laws and measures of All-Union and local significance; the right to submit proposals to state bodies and public organisations for improving their activity, and to criticise shortcomings in their work; freedom of speech, of the press, and of assembly, meetings, street processions and demonstrations; the right to associate in public organisations that promote their political activity and initiative and satisfaction of their various interests. The basic rights

[1] V. I. Lenin, *Collected Works*, Vol. 27, p. 156.

and freedoms of Soviet citizens are expressive of the kind of relations between the individual, society and the state, when the individual, being a Soviet citizen, takes an active part in administering public affairs and in organising and carrying out the entire activities of the state, while society and the state create the conditions making it possible for the individual to exist as a citizen.

The constitutional political rights of Soviet citizens we have discussed fully correspond to the provisions of the International Covenant on Civil and Political Rights, in particular its Articles 21 and 22.

Of great importance to the involvement of the masses into government is the right of citizens to take part in the management and administration of state and public affairs (Art. 48 of the Constitution of the USSR). This right is ensured by the opportunity to vote and to be elected to Soviets of People's Deputies which are representative bodies of state authority.

In accordance with the Constitution of the USSR, deputies to all Soviets are elected on the basis of universal, equal, and direct suffrage by secret ballot (Art.95). Elections of deputies are universal. All citizens of the USSR who have attained the age of eighteen have the right to vote and to be elected, with the exception of persons who have been legally certified insane. A Soviet citizen who has reached the age of 21 becomes eligible for election to the Supreme Soviet of the USSR (Art. 96).

Elections of deputies are equal: each citizen has one vote; all voters exercise the franchise on an equal footing (Art. 97). Elections are direct: deputies to all Soviets of People's Deputies are elected by direct vote (Art. 98). Voting at elections is secret: control over voters' exercise of the franchise is inadmissible (Art. 99).

Exercising their franchise, i.e. the right to elect and be elected to bodies of state authority and to judicial bodies, citizens themselves, through their elected representatives, form bodies of the state, determining the content and political orientation of their activities and controlling their work throughout. Citizens exercise this right also by taking part in the preparation and conduct of elections, supervising the work of elective bodies, and by recalling deputies and people's judges who fail to justify the electors' trust.



The right of vote belongs to Soviet citizens. It enables all adult Soviet citizens to participate in the administration of the socialist state of the whole people. This right fully expresses and guarantees the sovereignty of the Soviet people.

The constitutional right of Soviet citizens to take part in the management and administration of state and public affairs also presupposes their participation in the discussion and drafting of laws and decisions of all-Union and local significance. The Constitution of the USSR (Art. 5) stipulates that major matters of state shall be submitted to nationwide discussion and put to a popular vote (referendum). In recent years it became a practice to submit to nationwide discussion major legislative enactments.

The nationwide discussion and adoption in 1977 of the new Fundamental Law (Constitution) of the USSR were the most prominent political events in the life of the Soviet Union in recent years. The draft Constitution was discussed for over four months during which time almost a mrillion and a half meetings were held for the purpose at industrial enterprises, collective farms, military units and in neighbourhoods. The draft was discussed at plenary meetings, meetings of activists and of membership in the trade unions, the YCL, co-operative associations and professional organisations. More than 450,000 open Party meetings were held at which over three million speakers took the floor. The draft was considered by all Soviets, from village to Supreme Soviets of the Union republics, i.e. by more than two million deputies representing the entire Soviet people. Each of these forums approved the draft.

Letters from Soviet citizens poured in endlessly. Altogether, about 400,000 amendments were suggested with the purpose of specifying, improving and supplementing various articles of the draft Constitution. After a careful study of the proposed amendments, the Constitutional Commission recommended that changes be introduced in 110 articles of the draft and a new article added. When it discussed the draft Soviet Constitution, the Supreme Soviet of the USSR adopted these proposals.

The Constitution of the USSR grants Soviet citizens the right to take part in the work of state bodies, public organisations, and local community groups, and in meetings at places of work or residence.

In accordance with Art. 49 of the Constitution of the USSR, every citizen of the USSR has the right to submit proposals to state bodies and public organisations for improving their activity, and to criticise shortcomings in their work. This constitutional right is guaranteed by the fact that officials are obliged, within established time-limits, to examine citizens' proposals and requests, to reply to them, and to take appropriate action. Persecution for criticism is prohibited under the Constitution of the USSR.

Article 51 of the Soviet Constitution proclaims: "In accordance with the aims of building communism, citizens of the USSR have the right to associate in public organisations that promote their political activity and initiative and satisfaction of their various interests.

"Public organisations are guaranteed conditions for successfully performing the functions defined in their rules."

The meaning and content of Soviet democracy consists above all in the ever broader involvement of the masses in the management of public affairs. A ramified system of public organisations enables millions of citizens to take an active part in administering the affairs of society and the state and making decisions on socio-political, economic, cultural and educational matters.

Public organisations are associations of Soviet people, set up in accordance with their interests and their will on the principles of voluntary membership and self-government with respect to the development of their initiative and activity. In accordance with the aims of building communism, citizens of the USSR have the right to associate in public organisations—trade unions, co-operative societies, youth organisations, sport and defence organisations, cultural, technical and scientific societies. The most active and politically-conscious citizens in the ranks of the working class, working peasants and working intelligentsia voluntarily unite in the Communist Party of the Soviet Union, which is the vanguard of the working people in their struggle to build communist society and is the leading core of all organisations of the working people.

Carrying out as they do one and the same task of building communism, self-activating organisations of the working people permit the most flexible and the fullest combination of citizens' public and private interests,



Public organisations together with state bodies take an active part in tackling highly important tasks, those above all connected with the running of production, improvement of the standards of everyday life, health protection, provision of cultural amenities, and consolidation of socialist law and order. They will have a growing role in the future too in the management of cultural institutions, the health service, and social security system. Public organisations will gradually take charge of entertainments, clubs, libraries and other cultural and educational institutions, and will concern themselves increasingly with the maintenance of public order, and so on.

Under Art. 58 of the Constitution of the USSR, citizens of the USSR have the right to lodge a complaint against the actions of officials, state bodies and public bodies. Complaints are to be examined according to the procedure and within the time-limits established by law.

Actions by officials that contravene the law or exceed their powers, and infringe the rights of citizens, may be appealed against in a court in a manner prescribed by law.

Citizens of the USSR have the right to compensation for damage resulting from unlawful actions by state organisations and public organisations, or by officials in the performance of their duties.

Under the Constitution, the fundamentals of the legal status of a Soviet citizen, besides rights and freedoms, are also comprised of duties and obligations. Soviet citizens are obliged to observe the Constitution of the USSR and Soviet laws, comply with the standards of socialist conduct, and uphold the honour and dignity of Soviet citizenship (Art. 59); to safeguard the interests of the Soviet state, and to enhance its power and prestige (Art. 62); to respect the national dignity of other citizens, and to strengthen friendship of the nations and nationalities of the multinational Soviet state (Art. 64); to respect the rights and lawful interests of other persons, to be uncompromising toward anti-social behaviour, and to help maintain public order (Art. 65).

Military service in the ranks of the Armed Forces of the USSR is an honourable duty of Soviet citizens (Art. 63); defence of the socialist Motherland is the sacred duty of

every citizen of the USSR (Art. 62); betrayal of the Motherland is the gravest of crimes against the people (Art. 62).

The Soviet Constitution points to the moral as well as legal duty of Soviet citizens to society and the state. So, the constitutional duty of Soviet citizens to defend the socialist country is of moral as well as legal nature as it coincides with their convictions and vital interests. Love for the Motherland and its defence is the highest moral principle in socialist society.

As has already been noted, the Soviet laws fully conform to the international covenants on human rights greatly enriched under the impact of the political and socio-economic achievements and practice of socialist democracy. In defining the scope and the guarantees of many individual rights and freedoms, Soviet laws go much further than the international covenants on human rights and other international agreements.

Article 25 of the International Covenant on Civil and Political Rights proclaims the right to take part in the administration of public affairs. Every citizen, it states, shall have the right and the opportunity, without any distinctions and without unreasonable restrictions:

(a) to take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) to have access, on general terms of equality, to public service in his country.

These political and civil rights are legally guaranteed by each State Party to the Covenant undertaking to respect them without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin property, birth or other status (Point "c" of Art. 25 and Point 1 of Art. 2 of the Covenant on Civil and Political Rights).

Corresponding to this provision of the Covenant are some rules of Soviet constitutional law, the main of them



being articles of the Constitution of the USSR and other Soviet laws.

The International Covenant on Civil and Political Rights proclaims the right of everyone to hold opinions without interference and express them freely (Art. 19, Point 1). The said right includes "freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice" (Art. 19, Point 2). The exercise of these rights, according to Point 3 of Art. 19, "carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary

"(a) For respect of the rights or reputations of others;

"(b) For the protection of national security or of public order (*ordre public*), or of public health or morals."[1]

These provisions are matched by Arts. 50, 49, 48 and 47 of the Soviet Constitution proclaiming and ensuring freedom of speech and of the press, the right to submit proposals to state bodies and public organisations for improving their activity, and to criticise shortcomings in their work, the right to take part in the discussion and adoption of laws and measures of all-Union and local significance, freedom of scientific, technical, and artistic work, and so on. Current legislation provides additional legal guarantees of the exercise of these rights (e.g. Arts. 457-516 of the Civil Code of the RSFSR and the respective articles in the Civil Codes of the other Union republics on copyright; Art. 141 of the Criminal Code of the RSFSR and the respective articles in the Criminal Codes of the other Union republics on copyright).

Simultaneously, the Fundamentals of Civil Legislation of the USSR and the Union Republics (Art. 7) protect the individual from the divulgence of oral or written defamatory information while Arts. 130 and 131 of the Criminal Code of the RSFSR (and the corresponding articles in the Criminal Codes of the other Union republics) protect him from insult and slander.

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[1] *Basic Documents in International Law*, ed. by Ian Brownlie, Oxford, 1972, p. 169.

The Constitution of the USSR also states that freedom of speech, of the press, and of assembly, meetings, street processions and demonstrations should be exercised "in accordance with the interests of the people and in order to strengthen and develop the socialist system" (Art. 50).

Soviet criminal legislation imposes criminal liability for agitation and propaganda aimed at undermining or weakening Soviet rule, for spreading slanderous concoctions maligning the Soviet state and social system, and for circulating or manufacturing or keeping for the same purpose writings of a similar kind (Art. 70 of the Criminal Code of the RSFSR and the corresponding articles of the Criminal Codes of the other Union republics).

Apart from that, in conformity with the Law on the Defence of Peace, the Criminal Codes of the Union republics contain rules imposing criminal liability for the propaganda of war (Art. 71 of the Criminal Code of the RSFSR, et al.).

These provisions fully conform to Point 3 of Art. 19 of the Covenant on Civil and Political Rights which stipulates that certain restrictions may be necessary "for the protection of national security or of public order (*ordre public*), or of public health or morals", as well as to Art. 20 of the same Covenant on the prohibition of war propaganda.

As for "freedom to seek, receive and impart information and ideas of all kinds", Soviet law imposes no restrictions in this respect.

In the Final Act of the Conference on Security and Co-operation in Europe, which states that the participating states "make it their aim to facilitate the freer and wider dissemination of information of all kinds, to encourage co-operation in the field of information and the exchange of information with other countries", the Soviet Union, together with the other states, declared its intention

(a) to facilitate the dissemination of oral information;

(b) to facilitate the improvement of the dissemination, on their territory, of newspapers and printed publications from the other participating states;

(c) to contribute to the improvement of access by the public to printed publications and develop the possibilities for taking out subscriptions according to the modalities particular to each country;



(d) to promote the improvement of the dissemination of filmed and broadcast information so as to meet the interest of mutual understanding among peoples; and so on.[1]

All these forms of dissemination of information such as the possibility of subscribing to foreign newspapers and other publications, easy access to public libraries, exchange of radio and television programmes, and so on, are widely practised in the Soviet Union.

It is only in socialist society, free from social antagonisms, that human individuality can develop fully. The conditions providing for the all-round development of every individual are rooted in the socialist society and state. In turn, the formation and development of each Soviet citizen as an individual are an earnest of the successful development of the socialist society and state.

Formation of a versatile individual combining intellectual refinement, moral purity and physical perfection practically starts only under socialism. The history of the building of socialism in the USSR is, first of all, the emergence and development of the new man as a truly free individual with a new attitude to life and work, society and the state.

The rights of Soviet citizens whereby their individual freedom and safety are ensured form, as a system, the constitutional institution of the personal rights and freedoms of Soviet citizens, viz. inviolability of the person and the home, legal protection of the privacy of correspondence, telephone conversations, and telegraphic communications, freedom of scientific, technical, and artistic work, and freedom of conscience.

Freedom of the individual is also legally established in such constitutional principles as the equal rights of citizens in all fields of economic, political, social, and cultural life, without distinction of origin, social or property status, race or nationality, sex, education, language, attitude to religion, type and nature of occupation, domicile, or other status (Art. 34 of the Soviet Constitution), the equal rights of women and men (Art. 35), and the equal rights of citizens of different races and nationalities (Art. 36).

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[1] See *New Times*, No. 32, August 1975, pp. 41-42.

Inviolability of the person is a constitutional freedom aimed to ensure individual freedom and security to every Soviet person. It implies, in the first place, that no one may be arrested except by a court decision or on the warrant of a procurator (Art. 54). In is a major legal guarantee against wrongful limitation or deprivation of freedom.

One should remember that the notion of the *inviolability of the person* does not boil down to freedom from arbitrary arrest. It also implies freedom from actions such as may involve restriction of individual freedom or encroachment on one's honour and dignity. It also implies physical immunity, and so on.

The Soviet Constitution contains the following provision of fundamental importance: "Respect for the individual and protection of the rights and freedoms of citizens are the duty of all state bodies, public organisations, and officials.

"Citizens of the USSR have the right to protection by the courts against encroachments on their honour and reputation, life and health, and personal freedom and property" (Art. 57).

All Soviet state bodies, officials, and private citizens must strictly observe socialist legality.

Government officials guilty of prosecuting an obviously innocent person, passing unjust sentence or wrongfully arresting and detaining a person incur criminal responsibility (Arts. 176-178 of the Criminal Code of the RSFSR). Equally regarded as criminal are such wrongful restrictions of personal immunity by officials as abuse of authority or official capacity, accompanied by violence or use of arms or which were painful and humiliating (Arts. 170 and 171 of the Criminal Code of the RSFSR). The law establishes additional safeguards which are to protect citizens from arbirtary restriction of personal freedom and interests. These include the right of the accused to legal defence and to supervision by the Procurator's Office; the right to appeal against the proceedings and decisions of investigating authorities and courts; and so on.

Soviet law protects personal immunity of citizens by putting a stop to wrongful actions aimed at restricting an individual's freedom to do with himself as he sees fit, and to encroachments on his life, health, personal freedom and security, honour and dignity. Homicide, assault, rape, kidnapping or change of a child, unlawful detention, malicious libel are regarded as criminal offences and are punishable accordingly (Art. 102-106, 108-114, 117, 125-126, 130-131 of the Criminal Code of the RSFSR).



The home of a citizen too is inviolable and protected by law (Art. 55 of the Constitution of the USSR). This means that no one may enter a home against the will of those residing in it. A citizen's home may be entered without his consent solely if it is necessary for maintaining public order or state security.

In certain cases, the law allows investigating authorities to search a citizen's home on the warrant of a procurator. Unlawful search, eviction and other wrongful actions violating the immunity of a citizen's home are criminal offences under the law.

Article 56 of the Constitution of the USSR proclaims: "The privacy of citizens, and of their correspondence, telephone conversations, and telegraphic communications is protected by law."

The strictly private nature of correspondence of all kinds sent by post, telephone or radio telegraph is recognised by the Soviet Communications Rules. Violation of privacy of correspondence entails criminal responsibility (Art. 135 of the Criminal Code of the RSFSR). Only in some cases, when public order or state security are at stake, does the law allow private correspondence to be examined and confiscated by specially authorised persons, on the warrant of a procurator and in the presence of witnesses.[1]

Freedom of scientific, technical, and artistic work is an important constitutional form of freedom of the individual.

Granted to Soviet citizens in accordance with the aims of building communism, freedom of scientific, technical, and artistic work enables them to realise to the full their abilities and gifts. Such constitutionally recognised and

[1] The above-mentioned freedoms correspond to the provisions of Art. 17 of the International Covenant on Civil and Political Rights that "no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation" (*Yearbook on Human Rights for 1966*, p. 445).

ensured freedom to give full play to individual creative potentialities is a major attribute of freedom of the individual as such. Freedom of scientific, technical, and artistic work is ensured by broadening scientific research, encouraging invention and innovation, and developing literature and the arts. The state provides the necessary material conditions for this and support for voluntary societies and creative unions, organises introduction of inventions and rationalisation proposals in the economy and other spheres of activity. The rights of authors, inventors and innovators are protected by the state.

In accordance with Art. 52 of the Constitution citizens of the USSR are guaranteed freedom of conscience. Every citizen has the right to profess or not to profess any religion. Believers have the right to free religious worship, whether on their own or in common with others to perform religious cults, take part in religious rites or ceremonies, and so on. Those, on the other hand, who hold atheist views may express them freely and conduct atheistic propaganda.[1]

In order to ensure freedom of conscience, the church in the USSR is separated from the state, and the school from the church. The legal character of the relation between the church and the state was first defined in the Decree on the Separation of the Church from the State, and the School from the Church, issued by the Council of People's Commissars of the RSFSR on January 23 (February 5), 1918.[2]

Separation of the church from the state implies:

that the state may by no means control or dictate one's attitude to religion;

that every citizen may profess any religion he likes or none at all;

that all citizens are assured equal rights, irrespective of their attitude to religion.

Separation of the school from the church means that religious organisations may not exert any influence on public education or teach religious doctrines at state and public educational establishments, or set up schools, classes, courses, etc. to teach religion to citizens at large. Religious doctrines may be taught only at ecclesiastical schools training ministers of religion. Citizens may teach and be taught religion privately. Parents or lawful guardians may give their children or charges a religious upbringing and give them religious instruction.

The law allows adult believers to unite in religious associations for the satisfaction of their religious needs in common, to take part in their activities, to support them financially, to elect the governing bodies of their associations, to set up religious centres or to be autonomous, and so on. Believers uniting in a religious association may receive from the state for free use prayer houses, or they may rent, buy or construct premises for the purpose; they may hold prayer meetings, and perform rites as required by their religion without interference.[1]

The state protects the right of citizens to free religious worship. Hindering the latter so long as it constitutes no breach of public order or violation of the rights of citizens entails criminal liability under Art. 143 of the Criminal Code of the RSFSR and similar articles in the Criminal Codes of the other Union republics.

Separation of the church from the state in the Soviet Union implies non-interference of the state in the legitimate activities conducted by believers' associations as well as non-intervention of religious organisations in the political, economic, social, cultural and other activities of state bodies and mass organisations.

Performance of religious rites—e.g. a church wedding—is a strictly private affair without any legal consequences; papers certifying the performance of a rite have no legal force.

Control over the observance of citizens' rights and dutie associated with the satisfaction of their religious need

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[1] This constitutional freedom of Soviet citizens corresponds to Art. 18 of the International Covenant on Civil and Political Rights.

[2] See *SU RSFSR*, No. 18, 1918, Item 263.

[1] These provisions, along with the procedures of the formation and functioning of religious associations, are contained in the Decision of the All-Union Central Executive Committee and the Council of People's Commissars of the RSFSR, On Religious Associations, issued on April 8, 1929 (*SU RSFSR*, No. 35, 1929, Item 353; No. 8, 1932, Item 41; as amended by the Decree of the Presidium of the Supreme Soviet of the RSFSR of June 23, 1975, published in the *Vedomosti Verkhovnogo Sovieta SSSR*, No. 27, 1975, Item 672). There are such acts in the other Union republics as well.

is exercised by Soviets of People's Deputies. The observance of the law providing for freedom of conscience is supervised also by the Procurator's Office. Special control over the observance of the principle of freedom of conscience in the USSR, of laws and other normative enactments concerning religion is exercised by the Council for Religious Affairs, an all-Union state body under the USSR Council of Ministers.

Citizens' relation to religion makes no difference to the exercise of their social, economic, political and personal rights. Soviet law, which ensures equality to all citizens irrespective of their attitude to religion, establishes equal rights and duties for believers and non-believers alike.

No official acts, such as birth and marriage certificates, work-record cards, etc. make any reference to one's religion.

Anyone who refuses a citizen employment or admission to a school or dismisses him from his job or expels him from an educational establishment or deprives him of a legitimate privilege or limits his rights in any other way on account of his attitude to religion incurs criminal responsibility under Art. 142 of the Criminal Code of the RSFSR (similar articles are to be found in the Criminal Codes of the other Union republics).

The International Covenant on Civil and Political Rights (Point 3 of Art. 18) notes that "freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others."[1]

Soviet laws prohibit religious activities involving violation of public order or injurious to the health, morals or fundamental rights of citizens, or seeking to persuade citizens to take no part in public activities or to refuse to carry out their civil duties or to disobey Soviet laws in other ways. Insulting atheist propaganda accompanied by violent action is likewise prohibited.

In the Soviet Union, citizens also have the right to profess no religion and to carry on anti-religious propaganda, which is another aspect of freedom of conscience. Atheists may manifest their convictions and expound their materialist scientific world outlook, forming associations for this purpose or conducting atheist propaganda in other ways. Such activities must not hurt the religious feelings of believers or involve any violation of their lawful rights and interests. The Soviet state provides what is necessary for the exercise of freedom of anti-religious propaganda, placing at the disposal of citizens the mass media, cultural and educational organisations, and so on. The law assures conditions essential to the inculcation and growth of the scientific world outlook among the masses, especially young people, and protects Soviet people's intellectual culture from religious influences.

[1] *Yearbook on Human Rights for 1966*, p. 445.



The constitutional principle of equality of men and women is consistently carried out in socialist society. Article 35 of the Soviet Constitution proclaims: "Women and men have equal rights in the USSR.

"Exercise of these rights is ensured by according women equal access with men to education and vocational and professional training, equal opportunities in employment, remuneration, and promotion, and in social and political, and cultural activity, and by special labour and health protection measures for women; by providing conditions enabling mothers to work; by legal protection, and material and moral support for mothers and children, including paid leaves and other benefits for expectant mothers and mothers, and gradual reduction of working time for mothers with small children."[1]

Soviet laws establish political equality of women. Every Soviet woman who has reached the age of eighteen, irrespective of race or nationality, religion, education, domicile, property status or social origin has the right to take part in the election of government bodies and people's courts. to elect and be elected.

Women take an active part in the administration of the state.

They accounted for 31.3 per cent of the membership of the 9th Supreme Soviet of the USSR elected in 1974 (it had altogether 475 women deputies). The proportion of women deputies of local Soviets elected in June 1975 amounted to 48.1 per cent.

[1] See Art. 3 of the International Covenant on Civil and Political Rights and Art. 3 of the International Covenant on Economic, Social and Cultural Rights.

Nearly fifty per cent of those employed in state administration and economic management are women.

The earliest labour laws enacted under Soviet rule proclaimed the equal right of men and women to work, payment for work and social insurance, and ensured a comprehensive protection of female labour and care of mothers.

Under Soviet laws, women enjoy some rights which are exclusive to them and which stem from the state's solicitude for mothers.

Soviet laws establish a whole range of measures to protect female labour. Labour Codes of the RSFSR and the other Union republics introduce privileges for working women. Women may not be employed on arduous jobs or such as may be harmful to women, including work underground (Art. 160 of the RSFSR Labour Code); pregnant women or mothers of infants less than twelve months old may not be dismissed or refused employment (Art. 170 RSFSR). The management must, if necessary, transfer an expectant mother to lighter work with the same pay as before (Art. 164 RSFSR). Women are granted 112 days' maternity leave with full pay (Art. 165 RSFSR) and have paid breaks for feeding a baby (Art. 169 RSFSR). Women may not be put on night shifts, except in industries in which it is especially needed and is allowed as a temporary measure (Art. 161 RSFSR). These and some other measures provide the conditions enabling women to combine motherhood with participation in socially useful work.

Under the law, women enjoy some privileges with respect to social security. They retire on pension five years earlier than men (i. e. at 55), after a service of 20 years, which is five years shorter than what is required of men. The terms of retirement are still more privileged in some industries. For example, women who work at some textile mills may retire at fifty. Mothers of large families qualify for an old-age pension also at fifty, if they have worked for fifteen years.

A growing number of women are engaged in brainwork. Currently, they account for 85 per cent of those in the health service and social security; more than 70 per cent of those in education and culture; and about 50 per cent of those in industry, science and scientific service.

Women's subordinate position in the family was put paid to early under Soviet rule. A woman is en equal party



to a marriage. She enjoys equal parental and property rights, and so on.

It is emphasised in the Fundamentals of Legislation of the USSR and the Union Republics on Marriage and the Family that family relations are based on a voluntary marital union of a man and a woman, on feelings of love, friendship and respect, free from financial considerations. Spouses enjoy equal property rights. The law comprehensively protects the interests of mother and child.

The Soviet state appreciates highly the contribution made by working mothers and gives them every possible assistance. Even during the Great Patriotic War. the Presidium of the Supreme Soviet of the USSR issued, on July 8, 1944, a Decree on Better State Assistance to Expectant Mothers, Mothers of Large Families and Unmarried Mothers, Better Care of Mother and Child, Introduction of the Honorary Title of Heroine Mother and Institution of the Order of Maternal Glory and Maternity Medal. As the economic potential of the Soviet Union increases, more privileges are granted to mothers. The state pays mothers of large families and unmarried mothers monthly allowances in proportion to the number of children. Recently, allowances were introduced for children of lower-income families, and payments on account of a child's sickness were increased; women on maternity leave now draw pay, regardless of previous length of service, and so on.

Equality of rights of Soviet citizens, irrespective of nationality or race, in all spheres of economic, government, cultural, social and political activity, is an indefeasible law.

In the process of building socialism, the socialist nations, united by their common social system, have achieved political, economic and cultural equality. Their national statehood, that powerful means of their social and economic transformation, all-round progress and fraternal co-operation, has grown and matured. Whatever their nationality or race, Soviet citizens enjoy equal rights and have equal duties to society and the state. Any direct or indirect limitation of the rights of citizens or establishment of direct or indirect privileges on grounds of race or nationality, and any advocacy of racial or national exclusiveness, hostility or contempt, are punishable by law (Art. 36 of the Constitution of the USSR). Equality of rights of citizens of different

nationalities and races is ensured in the Soviet Union by the equality of all peoples, big and small, by the uniform socialist basis of society and the state, and by equal satisfaction of the material and spiritual needs of each people. An international community of peoples has taken shape in the Soviet Union. Co-operation and mutual support, awareness of common historical destiny and identity of the tasks being tackled in the interest of each people and the Soviet nation as a whole are the most salient features of the relations between peoples in the Soviet Union.

Equality of rights of Soviet citizens irrespective of their nationality is an expression of the equality and cohesion of all socialist nations. Every Soviet citizen, whatever his nationality, considers his republic or national area to be an integral part of one socialist country.

As there are rights and freedoms for citizens in the socialist state, so is there an obligation on the part of that state to ensure the exercise of these rights and freedoms, not to interfere with them, and protect them, if need be, from being violated by any agencies, officials or citizens.

The reciprocal nature of the legal relationship between citizens and the state is expressed not only in rights and freedoms, but also in the duties imposed by the state on its citizens. In the system of socialist democracy, broad social and political rights of citizens are inseparable from their public duties.

In socialist society in which all relations are based on faith in man and citizens are encouraged to display initiative and creative capacities, they are not absolved from responsibility either. This is an expression of the spirit of collectivism and the ethics of genuine comradeship. Building up discipline, abiding by the law and complying with the standards of socialist conduct is indispensable to the successful and effective development of socialist democracy.

An absolute majority of Soviet citizens do not have to be forced to carry out their duties as they are aware that these duties are reasonable and necessary. As society progresses, the idea of public duty comes to be associated with outward enforcement or coercion less and less. This is, incidentally, a feature of the general process of fusion of civil rights and duties into uniform rules of living in communist society—a process whose ultimate result will be to bring about a situation in which rights and duties of citizens must gradually shed their legal character.



It is a major characteristic feature of socialist democracy that rights and freedoms of citizens are not only proclaimed but also ensured.

Soviet citizens can exercise their rights most effectively, thanks to the very social and state system, and the legal means of protection of the individual's life, honour, dignity, safety, property, and so on.

The rights of Soviet citizens are ensured above all by the Soviet economic system, based on socialist property and making exploitation impossible. Economic guarantees of citizens' rights are enhanced with the progress of socialist society. This is clear, among other things, from the measures taken to improve the living standards of Soviet people.

In developed socialist society, the state plays an ever greater role in ensuring individual freedom and pays close attention to working people's needs. Concern for the well-being of every person finds expression in a broad programme of social measures aimed at so improving the material and cultural standards as to level up living conditions in town and country. Much is done to improve conditions of work and leisure and provide for all-round development of the talents and initiative of Soviet people through accelerated development of socialist production and the progress of science and technology.

The rights of Soviet citizens are also ensured by legal means. Proclaiming in the Constitution the fundamental rights of citizens, the Soviet state sets up the courts, the Procurator's Office, people's control bodies, and other agencies to protect the rights of citizens. The state also introduces drastic sanctions in respect of those who violate legitimate rights and freedoms of Soviet citizens.

The fullest extension of citizens' rights and freedoms is a feature of the development of socialist society.

With the growth of public wealth and the further economic and cultural progress of the country, the rights and freedoms of members of socialist society will keep extending and becoming richer in content. Simultaneously, the citizens' responsibility to society is growing as the building

of communism proceeds, the mechanism of social regulation becomes more complex, the scientific and technical revolution advances and the cultural standards and political and legal awareness of citizens increase.

There exists under socialism a stable unity and correspondence of private and social interests of working people. Thanks to this, successes in the development of socialist society provide the source of the successful development of each individual while the development of the individual—his social, intellectual and moral growth and all-round unfoldment of his abilities—becomes increasingly decisive to the further development of society.

Certainly, exploiting society too, in spite of the internal class antagonisms which are tearing it apart, is marked by a measure of integrity due to the fact that there exist some common interests in it. Marx and Engels noted that in exploiting society the interest of the ruling class "is as yet mostly connected with the common interest of all other non-ruling classes".[1] Lenin also wrote that in exploiting society the different classes "have certain aims in common" and that the interests of "*different* classes ... coincide in certain definite, limited common aims".[2] The connection between and common activity of the different classes of society stem above all from the interests of production, although material interest is actually the source of the more deep-seated antagonisms. Yet the leading tendency in the development of every exploiting society is the aggravation of its internal antagonisms and disappearance of the highly relative and self-contradictory community of interests.

If material interest is what makes society "hold together", then under socialism society becomes united by dint of public ownership of the means of production. Under socialism, there emerges a kind of interest which is utterly different from that in pre-socialist antagonistic class societies. It is a new kind of interest also because it is truly social, being shared by all social groups and sections of which socialist society is comprised. Society no longer needs to suppress the individual, limiting his freedom and opportu-

[1] Karl Marx, Frederick Engels, *Collected Works*, Vol. 5, Moscow, 1976, p. 61.
[2] V. I. Lenin, *Collected Works*, Vol. 12, p. 404.



nities, in order to develop. Quite the contrary, the more socialist society prospers, the more chance its individual members have to succeed. The prediction made by the founders of scientific communism that under socialism the community of interests will become the basic principle, and the public interest will no longer be distinct from that of each individual[1] is coming true.

The harmony of interests of the individual and society under socialism is a continuous twofold process. It stems from both the effort of society at large to satisfy the growing needs of every individual, and the effort exerted by each individual in carrying out his social duties.

One should not imagine of course that social and private interests never clash under socialism. They may clash, for instance, because socialism is yet unable to satisfy absolutely all material and spiritual needs of citizens. Hangovers of the past still persist in some people's minds, and they play their role too. Most intolerable is the wrongful and criminal behaviour of some citizens who act against the vital interests of socialist society. These hangovers are of a transient nature and will be eliminated as socialist society grows over into communist society.

The building of communism is a continuously developing process whereby the community of interests of society and its individual members is extended and improved. Simultaneously, the community of interests of citizens and the state is enhanced and enriched. The community and harmony of interests of the individual and society, of every citizen and the state, are two sides of the same thing.

Growing social uniformity of Soviet society provides a firm foundation on which socialist democracy, the political system of mature socialism can develop further.

The institutions of socialist democracy give expression to the interests, initiative and creativity of the Soviet people as a whole and the classes, social strata, work collectives and individuals of which it is comprised. In turn, the development of socialist democracy exerts a powerful impact on all processes leading to the formation of a socially uniform society, as it emphasises the close relation between

[1] See Karl Marx, Frederick Engels, *Collected Works*, Vol. 4, Moscow, 1975, p. 249.

the democratism of the social and political life of society and the entire process of socio-economic development.

Every major stage in the development of socialist society implies an extension and improvement of democracy which is essential to the solution of key economic, social, political, and cultural tasks. While assuming an increasingly nationwide character as socialism matures, socialist democracy retains its proletarian-class nature and its main social purpose of being the exponent of the interests and the will of the masses.

The Soviet social system is consistently democratic because it guarantees, economically, politically and organisationally, the opportunity for all members of society to take part in public life, i. e. it ensures genuine government by the people. As the nationwide character of the social, political and state system develops (which process characterises the social uniformity of society and is simultaneously the criterion of its maturity), the foundations of socialist people's power (democracy) take deep root.

Genuine democracy pervades every sphere of Soviet society, effectively ensuring both the interests and rights of the whole people and those of each citizen.

It is an essential feature of socialist democracy that from its beginning the sphere of democratic administration becomes broader, democracy extending not only to politics, but also to economic management and the management of culture. Soviet socialist democracy embraces the environment in which man works and applies his creativity. It promotes the development of the activity and creative endeavour of working people, establishing them as masters of their own destiny and their country.

That is why such great importance attaches to strengthening democracy in production and to activities of mass organisations and bodies of working people.

Greater interest in the results of his work stimulates a worker to do his job more efficiently and to be more active politically. This form of democracy is aimed at ensuring successful operation of enterprises and building projects, fulfilment and overfulfilment of production plans, the fullest possible utilisation of the available reserves, development of the socialist emulation movement, higher labour productivity, propagation of the work methods of innovators and front-ranking workers, and conditions for highly efficient work. Millions of Soviet people are drawn into economic planning, development of the socialist emulation and innovators' movement, and improvement of working and living conditions.



Working people participate on an increasing scale in economic management through standing production conferences elected by general meetings of workers in each establishment. The conferences help to promote the initiative and activity of workers, support all that is progressive in the organisation of production, fight sluggishness and red tape, help to build up labour discipline in the factory, protect and multiply socialist property, and instil a communist attitude to work. Decisions passed by production conferences and not objected to by the management are considered binding and are carried into practice accordingly.

The further development of socialist democracy is a many-sided process which results in ever better and more effective forms of public management.

In the conditions of developed socialism, the state is a political organisation which accumulates the might and authority of the whole people, personifies its unity, expresses its will, and does everything to protect its interests.

Socialist democracy relies on legality. Genuine legality can only exist in a society based on thoroughly democratic principles.

Enhancement of socialist legality implies both the most rigorous protection of rights of citizens from arbitrary actions, including such as may be committed by officials, and the most rigorous observance of Soviet laws and public order by all citizens.

As a principle underlying the activities of state bodies and mass organisations, legality is a major condition which makes democratic administration of the state and society possible, and a means whereby socialist democracy is established and developed.

As socialist democracy develops further, social consolidation in the political and intellectual spheres of the life of society extends increasingly. All these social processes will result in the achievement of complete unity of the individual and society, in absolute social uniformity, and firm establishment of communist equality.

## Chapter 9

### THE LEGAL STATUS OF SOVIET CITIZENS ABROAD

Article 33 of the Constitution of the USSR states: "When abroad, citizens of the USSR enjoy the protection and assistance of the Soviet state." This constitutional provision has been reproduced in Clause 6 of the USSR Citizenship Act of 1978.

The legal status of Soviet citizens abroad is determined, above all, by rules of Soviet law.

One of the first decrees of Soviet government concerning the legal status of Soviet citizens abroad was issued on October 18, 1918 by the Council of People's Commissars (CPC) of the RSFSR. It dealt with the organisation of consulates. Under the decree, Soviet consuls were, among other things, to protect the economic, legal and social interests of individual citizens of the Russian Republic or their associations.

On May 26, 1921, the CPC RSFSR issued a decree on the status of Soviet agencies abroad. The same period witnessed the emergence of the laws regulating Soviet citizens' departure from the country.

On January 8, 1926, the CEC and CPC USSR approved the Consular Rules of the USSR, which confirmed many rules regarding the protection of the rights and interests of Soviet citizens abroad.

Currently, the rules regulating the departure of Soviet citizens abroad and their legal status while there are contained in the Constitution of the USSR, laws, decrees of the Presidium of the Supreme Soviet of the USSR, decisions of the Council of Ministers of the USSR and various instructions and rules issued by Soviet ministries and departments.

Questions concerning the departure of Soviet citizens from the country are regulated by the Entry and Exit



Rules of the USSR, issued on September 22, 1970,[1] and the Frontier Defence Rules of the USSR, issued on August 5, 1960.[2] Some rules on the legal status of Soviet citizens abroad are contained in the Fundamentals of Criminal Legislation of the USSR and the Union Republics, issued on December 25, 1958,[3] in the 1964 Customs Rules of the USSR,[4] in the Law on Universal Military Service, issued on October 12, 1967,[5] in the Fundamentals of Legislation on Marriage and the Family, issued on June 27, 1968,[6] and in other measures.

Rules concerning the legal status of Soviet citizens abroad are also to be found in civil procedure, criminal, and marriage and family codes of Union republics.

The legal status of Soviet citizens abroad is also determined by international treaties concluded by the USSR with foreign states at one time or another. In concluding such treaties, the Soviet Union always follows the principle of sovereign equality of large and small nations.

One of the first international legal agreements concluded by the Soviet state, the treaty between the RSFSR and Persia of February 26, 1921, stated that Russian citizens residing permanently in Persia as well as Persian citizens residing permanently in Russia were to enjoy thereafter equal rights with local citizens, and obey the laws of the country of domicile. They were to be tried by local courts (Art. XVI).

There was a similar article (Art. X) in the treaty between Russia and Turkey, concluded on March 16, 1921.

Some international treaties concluded by Soviet republics before the formation of the USSR also contained provisions on the rights of Soviet citizens abroad. To quote a few examples, such provisions were made in the trade agreement between the RSFSR and Great Britain, concluded on March 16, 1921; the interim agreement of the RSFSR and the Ukraine with Austria, concluded on December 7, 1921;

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[1] *SP* (*Sbornik postanovlenii*) *SSSR* (Collected Ordinances of the USSR), No. 18, 1970, Item 139.
[2] *Vedomosti Verkhovnogo Sovieta SSSR*, No. 34, 1960.
[3] *Ibid.*, No. 1, 1959.
[4] *Ibid.*, No. 20, 1964.
[5] *Ibid.*, No. 42, 1967.
[6] *Ibid.*, No. 27, 1968.

the treaty between the RSFSR and Germany (the Rapallo Treaty), signed on April 16, 1922, and so on.

The treaty regulation of the legal status of citizens abroad, including Soviet citizens, made headway after the formation of the federal state. The USSR concluded treaties and agreements with Italy (1924), Sweden (1924), Germany (1925), Norway (1925), and with Turkey, Iraq, Iceland, Yemen, Greece and some other countries in 1926-1929. The agreements usually contained articles on the status of citizens of the Contracting Parties. In 1930-1935, similar agreements were concluded with Britain, Belgium, Czechoslovakia and other countries.

A system of trade treaties and special agreements concerning, among other things, some aspects of the legal status of Soviet citizens abroad were concluded by the USSR later on. For instance, the Treaty on Trade between the Government of the USSR and the Governments of Belgium, the Grand Duchy of Luxembourg, and the Kingdom of Netherlands (the economic Benelux Union), concluded on July 14, 1971, stipulates that Soviet citizens as well as Soviet economic organisations and other legal persons shall enjoy, in respect of person and property, conditions as favourable as those of citizens and legal persons of the most favoured nation insofar as their economic activity is allowed by the laws of Belgium, Luxembourg and the Netherlands. Similar commitments were made by the Soviet side.[1]

A particular place in Soviet treaty-making belongs to treaties on legal aid to be rendered in civil, family and criminal cases, which deal with many questions of the legal status of Soviet citizens abroad. Such treaties were concluded by the Soviet Union with Albania, Bulgaria, Hungary, the GDR, Poland, Rumania, Czechoslovakia, the Mongolian People's Republic and the Democratic People's Republic of Korea.[2] The treaties deal with the co-operation

[1] *Sbornik deistvuyushchikh dogovorov, soglashenii i konventsii, zaklyuchonnykh SSSR s inostrannymi gosudarstvami*, Issue XXIX, 1975, pp. 260-261. See also *Vedomosti Verkhovnogo Sovieta SSSR*, No. 25, 1973.

[2] *Dogovory ob okazanii pravovoi pomoshchi po grazhdanskim i ugolovnym delam, zaklyuchonniye Sovietskim Soyuzom v 1957-1958 gg.* (Treaties on Legal Aid in Civil and Criminal Cases Concluded by the Soviet Union in 1957-1958), Gospolitizdat, Moscow, 1959. See also N. I. Marysheva, M. M. Boguslavsky, "Legal Co-operation among Socialist States" (*Sovietskoye gosudarstvo i pravo*, No. 11, 1961).



of judicial departments, legal defence of physical and legal persons, competence of the courts and application of the law, legal aid, acknowledgement and implementation of decisions in civil and family suits. They establish the principle that citizens of one Contracting Party shall be entitled to the same legal aid in respect of their person and property in the territory of the other Contracting Party as the latter's own citizens. Citizens of one of the Contracting Parties may speak in the agencies of the other Contracting Party, having jurisdiction over civil, family and criminal cases, sue and file applications and complaints on the same footing as citizens of the other Contracting Party.

According to legal aid treaties, decisions pronounced by courts of one of the Contracting Parties on dissolution of a marriage or declaring a marriage void or establishing the existence or non-existence of a marriage shall be accepted in the territory of the other Contracting Party without further proceedings, provided that at the time of the passing of sentence at least one of the spouses was a citizen of that Contracting Party whose court passed sentence, and that no court of the other Contracting Party passed a decision in the same case, the decision having already come into force.

Under legal aid treaties, cases in which fatherhood or motherhood is challenged and has to be established or in which it has to be established whether a child is an issue of a given marriage are settled in conformity with the laws of that Contracting Party whose citizen the child is by reason of birth. Legal relations between a child born out of wedlock and the mother and father of the child, including the establishment of fatherhood or motherhood, are determined by the laws of the Party whose citizen the child is.

In cases of adoption, the laws of that Party are applied whose citizen the adopter is. If a child is adopted by spouses one of whom is a citizen of one Contracting Party while the other is a citizen of the other Contracting Party, the

adoption must conform to such laws as are effective in the territory of both Parties. If a child is a citizen of one Contracting Party and the adopter, of the other Contracting Party, the consent of the child to the adoption is necessary if required by the laws of the Party whose citizen the child is, as well as the consent of the child's lawful representative or a competent agency of that Contracting Party.

Legal aid treaties stipulate that citizens of one Contracting Party while in the territory of the other Party shall have the same rights as citizens of the other Party to inherit by law or by testament the property which is on the territory of the last-mentioned Contracting Party.

The right to inherit movable (personal) property is subject to regulation by the laws of that Contracting Party whose citizen the testator was at the time of his death while the right to inherit immovable (real) property is subject to the laws of that Party on whose territory the property is.

Further, the Contracting Parties commit themselves to extradite on requisition persons found on their territory who are wanted for the purpose of prosecution or execution of sentence.[1]

Many of the rules established under the treaties on legal aid in civil, family and criminal cases directly refer to the definition of the legal status of Soviet citizens abroad (on the territory of the other Contracting Party) and of aliens (citizens of the other Contracting Party) on the territory of the USSR.

Speaking of the fundamentals of the legal status of Soviet citizens abroad, one must note in the first place that by extending national treatment to Soviet citizens foreign states make it in principle as possible for them to acquire

[1] Extradition refers only to those guilty of actions considered by both Contracting Parties to be crimes and punishable by imprisonment exceeding twelve months or entailing heavier punishment. Extradition cannot take place if, among other things, the person concerned is a citizen of the Contracting Party of which his extradition is demanded or if the crime was committed on the territory of the Party of which his extradition is demanded.



citizenship rights as for their own citizens. Should any discriminatory restrictions be applied against Soviet citizens, the Soviet state has the right to apply retortion, imposing, in its turn, restrictions on citizens of the state having applied such discriminatory measures.[1]

Certain rights may be granted to Soviet citizens by a foreign state on a reciprocal basis, under a treaty.

It is possible, for example, for a Soviet citizen who has the right to inheritance under Soviet laws, to acquire the right to inheritance under the laws of a foreign state. It must be remembered that the possibilities afforded by Soviet and foreign laws may substantially differ. Thus, in the Soviet Union land cannot be owned by a private person and, consequently, cannot be inherited. In most other countries, however—socialist countries as well—land may be inherited and the capacity of Soviet citizens to acquire a title to land is recognised accordingly.

Western writers often cited Art. 10 of the 1936 Soviet Constitution,[2] seeking to show that Soviet citizens were prohibited by law from inheriting private property abroad. Article 10, however, proclaimed the right of Soviet citizens to inherit personal property in the USSR, and did not touch on any international issues. It was up to each country to determine what inheritance rights they granted to aliens, including Soviet citizens.

Soviet law protects the right of Soviet citizens to inherit property abroad, irrespective of whether or not they enjoy identical rights in the USSR.[3]

Soviet citizens residing abroad may conclude marriages and have civil status acts registered at Soviet embassies

[1] Under Art. 122 of the Fundamentals of Civil Legislation of the USSR and the Union Republics, "the Council of Ministers of the USSR may impose retaliatory restriction on citizens of countries imposing special limitations on the civil legal capacity of Soviet citizens".

[2] The citizens' right to inherit personal property is secured in Article 13 of the 1977 Constitution of the USSR.

[3] See A. A. Rubanov, "Protection and Exercise of the Right to Inheritance Acquired by Soviet Citizens Abroad" (*Sovietsky yezhegodnik mezhdunarodnogo prava, 1970* [Soviet Yearbook of International Law, 1970], Moscow, 1972, p. 171; R. Khalfina, *The Right to Personal Property in the USSR*, Progress Publishers, Moscow, 1967).

or consulates in respective countries.[1] The laws of the Union republic are applied whose citizens the persons concerned are. Should the persons concerned be citizens of different republics or should it be unknown which republic they are citizens of, the laws of one of the Union republics are applied by an agreement between them; should they disagree, the choice is made by the official registering the act of civil status.[2]

In spite of the fact that Soviet citizens are allowed to conclude marriages and have acts of civil status registered at Soviet embassies or consulates they may find it inconvenient to apply to the embassy or consulate if, for instance, they reside far from the nearest embassy or consulate and can reach them with difficulty or not at all. Apart from that, the country in which Soviet citizens sojourn may not recognise as legitimate marriages concluded at embassies or consulates of other countries. For this reason and in accordance with Soviet laws (Art. 32 of the Fundamentals of Legislation on Marriage and the Family) marriages between Soviet citizens are considered valid also when they were concluded not at an embassy or consulate, but at the appropriate agencies of the country of their sojourn and in the manner accepted in that country. Whatever form of marriage is considered valid in a given country, be it a church marriage or marriage by habit and repute, it is recognised in the Soviet Union. Simultaneously, a marriage concluded by Soviet citizens must conform to the rules of Soviet law.[3]

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[1] The Consular Rules of the USSR, approved by the Decree of the Presidium of the Supreme Soviet of the USSR on June 25, 1976, state: "In accordance with the laws of the USSR and the Union republics, a consul registers acts of civil status of citizens of the USSR..." (Art. 42 of the Rules); "Instructions on the procedure of registration of acts of civil status by a consul are subject to approval by the Ministry of Justice of the USSR and the Ministry of Foreign Affairs of the USSR" (Art. 44) (*Vedomosti Verkhovnogo Sovieta SSSR*, No. 27, 1976).

[2] Article 32 of the Fundamentals of Legislation of the USSR and the Union Republics on Marriage and the Family.

[3] Under Art. 10 of the Fundamentals of Legislation on Marriage and the Family, the registration of a marriage requires consent of both parties and that they should be of marriageable age, i.e. 18, as a rule.



Consequently, Soviet citizens must, irrespective of what the foreign law requires, satisfy the conditions of marriage established by the Soviet law. Therefore, if a Soviet citizen concluded a marriage abroad in conformity with the local law, without dissolving a previous marriage in the manner required, his new marriage will not be considered valid under Soviet law, even if polygamy is allowed in the country in which it was concluded.

Under Soviet law, divorce may be obtained only from a court of law. In individual cases only (when there are no minor children, etc.) does the law permit registry offices to grant a divorce. Soviet citizens residing permanently abroad may obtain a divorce from a Soviet court. Only in cases in which divorce could be obtained at a registry office, can a marriage between Soviet citizens be dissolved abroad at the embassy or consulate of the USSR in the country of their sojourn. Dissolution of marriage between Soviet citizens residing at the time abroad, in conformity with the laws of the respective foreign states, is considered to be valid (Art. 33 of the Fundamentals of Legislation of the USSR and the Union Republics on Marriage and the Family).

At the same time, Soviet citizens residing permanently abroad cannot thereby be deprived of the right to have their marriage dissolved by a Soviet court. And as such citizens have no permanent address in the Soviet Union, the court is appointed by the Supreme Court of the USSR which requests it to consider the case.

A child who has Soviet citizenship and lives outside of the USSR may be adopted by an alien as well as a Soviet citizen. Whatever the case, the adoption is registered by the Soviet consul in the country of domicile. If the adopter is a foreign citizen, permission must be obtained from the

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Marriages cannot be concluded between persons one of whom at least is already married; between relatives in the direct ascending or descending line, between full and half-brothers and sisters, between adopters and adoptees; and between persons either of whom has been recognised by a court of law as unfit in consequence of mental illness or feeble-mindedness.

A marriage already concluded is deemed invalid under Art. 15 of the Fundamentals, should it be established that the marriage was registered without the intention of setting up a family (i.e. is fictitious). A marriage can be invalidated only by a court.

appropriate agency of the Union republic whose citizen the child is (Art. 32 of the Consular Rules of the USSR).

Soviet citizens of full age residing abroad are registered for draft purposes at the consulate in the country of their sojourn. The Soviet consul must ensure that male Soviet citizens who have attained the age of eighteen should report at the military offices in the places in the Soviet Union where they permanently reside, for the purpose of military service (Art. 30 of the Consular Rules of the USSR).

A Soviet citizen is held to account in conformity with Soviet laws for any offence committed by him abroad which entails criminal punishment under Soviet law, irrespective of the gravity of the offence.[1] A Soviet citizen is held responsible whether the crime he has committed affects the interests of the USSR and its citizens or those of the foreign state and its citizens. A Soviet citizen is deemed responsible for offences committed abroad whether or not such offences are triable under the laws of the country concerned.

A Soviet citizen is held responsible under Soviet laws for a crime committed by him abroad also in the event he was sentenced abroad and the sentence has come into legal force, or even if he served the whole or a part of the sentence. He is liable under Soviet law even if he has been absolved from criminal responsibility and punishment at the place of the crime by reason of the expiry of the period of limitation, amnesty, pardon or other circumstances.

The Fundamentals of Criminal Legislation of the USSR and the Union Republics state that Soviet citizens who have committed crimes while abroad shall be subject to criminal responsibility under the criminal laws in force in the Union republic on whose territory criminal proceedings have been instituted against them or where they have been committed for trial (Art. 5), i.e. they are held to account in accordance with Soviet criminal legislation.

[1] Under criminal law of other socialist countries, like in Soviet criminal law, citizens of these countries incur liability for offences committed by them while abroad in accordance with the laws of their own country, regardless of whether the action is considered a crime in the law of the country in which it was committed (see Part I of the Hungarian Criminal Code; Part I, Art. 4 of the Bulgarian Criminal Code; Part 2, Para. 80 of the Criminal Code of the GDR; Art. 113 of the Polish Criminal Code; Art. 4 of the Rumanian Criminal Code; and Para. 18 of the Czechoslovak Criminal Code).



Similar rules are to be found in the Criminal Codes of Union republics. It is stated in the appropriate chapter of the Criminal Code of each Union republic that its Criminal Code or the criminal laws effective in its territory shall apply to all Soviet citizens who may be prosecuted or tried on the territory of a given republic for crimes committed by them abroad.

Under the Consular Rules of the USSR a consul is to see that the laws of the state of sojourn and treaties concluded between it and the Soviet Union are observed with respect to a Soviet citizen arrested or held in custody on suspicion of having committed a crime or otherwise having his movements restricted or serving a term of imprisonment or being subjected to other legal or official punishment. A consul must visit Soviet citizens in places of confinement and find out what their conditions are at the request of interested persons as well as on his own initiative. He also must see that such citizens should not be kept in unsanitary conditions or subjected to cruel or humiliating treatment (Art. 37 of the USSR Consular Rules).

Soviet citizens may belong to military units temporarily deployed on the territory of some socialist countries in accordance with the agreements concluded by the Soviet Government with the governments of such countries. It must be stressed that the legal status of Soviet citizens serving in the armed forces in this case follows entirely from the legal status of Soviet troops temporarily deployed on the territory of such states.

The legal status of Soviet forces abroad is remarkable for the fact that their temporary deployment on the territory of foreign states does not in the least affect the sovereignty of these states. Soviet forces do not interfere in their affairs. Soviet servicemen and their families are bound to respect and abide by the laws of the country of their sojourn, as is written down in the treaties between the Government of the USSR and the governments of such countries.

A Soviet serviceman guilty of violation of the law and order of the host country is recalled from its territory at the request of competent authorities. This refers to other than criminal offences. This provision is of great importance. It stipulates that Soviet servicemen shall have the

utmost respect for the laws of the host country or be removed from its territory.

Criminal and other offences committed by Soviet servicemen are investigated by the military procuracy and tried by a military court of the host country.

Criminal and other offences committed by Soviet servicemen or members of their families on the territory of the host country are dealt with in accordance with local laws by local courts, investigating and other competent bodies.

This provision does not apply where the offence is committed solely against the Soviet Union or against members of the Soviet Armed Forces or against members of their families. Nor does it apply in cases when members of the Soviet military forces commit criminal and other offences while on duty in the areas where the military units are deployed. Such cases are dealt with by the Soviet courts, the procurator's office and other bodies operating on the basis of Soviet law.

The treaties and agreements stipulate that competent Soviet bodies and bodies of the country in which Soviet forces are deployed may request each other to transfer or assume jurisdiction in individual cases. Such requests are considered by the parties in a favourable spirit.

Should a crime be committed on the territory of the host country against Soviet forces and their members, those guilty make themselves liable to proceedings in the courts of that country to the same extent as are offenders against its own armed forces and their members.

Point 3 of Art. 9 of the Treaty between the Government of the USSR and the Government of Czechoslovakia on the Conditions of Temporary Deployment of Soviet Forces on the Territory of Czechoslovakia reads: "In the event punishable acts are committed against the Soviet forces temporarily deployed on the territory of the Czechoslovak Socialist Republic, as well as against their members, those guilty shall incur the same responsibility as in the case of punishable acts committed against the Armed Forces of the Czechoslovak Socialist Republic and their members." In this case those responsible may be citizens of the host country or citizens of third countries. The agreements adhere to the commonly accepted principles that (1) aliens are tried by the courts of the host country; and (2) a country's



own citizens who have committed offences against Soviet military forces come within the jurisdiction of the national courts and national law without exception.

The agreements also contain some important provisions on the hearing of cases to determine liability for damages. Differentiated procedures are followed in such cases.

On the Soviet side, offences may be committed by military units and their members (including families).

The Government of the USSR compensates the Government of the country in which Soviet forces are deployed for the damage that may be caused by action or omission on the part of Soviet military units or their individual members as well as the damage that may be caused by Soviet military units or their members *while on duty* to institutions or citizens of the said country or citizens of a third country present on the territory of the said country. In both cases damages are paid as determined by a Mixed Commission[1] on the basis of the claims made and the provisions of local law. The Government of the USSR also compensates the Government of the country in which Soviet forces are deployed for damages that may be incurred to institutions or citizens of that country or citizens of a third country present on the territory of the said country as a result of actions or omissions on the part of the Soviet forces *while off duty* or as a result of actions or omissions on the part of members of the families of Soviet military men. In both cases the amount of compensation is determined by a competent court of law of the host country on the basis of the claims presented to the persons by whom the damage was caused.

The Government of the host country compensates the Government of the USSR for damage to the property of the Soviet forces and their members that may be caused by actions or omissions on the part of national institutions or citizens of the host country.

[1] To resolve problems arising from the interpretation or application of the agreements on the legal status of Soviet forces temporarily deployed on foreign territory, a Mixed Commission is set up in each case, each of the Contracting Parties appointing three representatives. The Mixed Commission works in accordance with the Rules it adopts. In the event the Mixed Commission fails to resolve the problem submitted to it, the latter must be resolved as soon as possible by diplomatic means.

Thus, we may state the following basic principles:

members of Soviet forces or members of their families who have committed crimes on the territory of other socialist countries are tried by the courts of the countries concerned on the basis of national criminal law;

persons guilty of crimes against Soviet forces or their members present in other socialist countries incur the same responsibility as for crimes committed against the armed forces (or their members) of the country on whose territory Soviet forces are deployed, i. e. they are tried by the same local courts on the basis of national laws;

members of Soviet forces or members of their families who commit crimes against the Soviet Union or against members of Soviet forces and their families, and members of Soviet forces who have committed a crime while on duty are tried by a Soviet court on the basis of Soviet criminal laws.

## Chapter 10

### THE LEGAL STATUS OF ALIENS IN THE USSR

Aliens are persons who are on the territory of one country while being citizens of another country. Such persons maintain a constant legal relationship with the country whose citizens they are, and a temporary one with the country of domicile. An alien is subject to both the laws of his own country and those of the country in which he sojourns or resides. The fact that he is subject to the laws of two countries simultaneously distinguishes an alien from a citizen and a stateless person each of whom is subject to one law and order.

Legal relationship with one's own country during a stay abroad manifests itself not only in the fact that citizens owe certain duties to their country, but also in the fact that the country protects, as far as international law allows, the rights and interests of its citizens abroad. At the same time, the right to protection must not be made a pretext for interference in other countries' internal affairs.

A country can expel an alien without having to notify his own country about the reasons why. Only if the expulsion is an obvious act of discrimination can the country discriminated against retaliate.

To give a comprehensive description of the legal status of an alien we must look at the appropriate rules of national and international law.

It follows from Art. 37 of the Constitution of the USSR that specific rights and freedoms of foreign citizens and stateless persons must be established by a special law.

Unlike other socialist countries (e.g. Poland and Czechoslovakia which have special enactments on private

international law[1]), Soviet legislation proceeds by fixing rules on aliens as well as rules on the application of the laws of foreign countries, international treaties and agreements, contained in certain Union and republican acts.

The rights and duties of aliens in the USSR are determined by certain laws, decrees of the Presidium of the Supreme Soviet of the USSR, decisions of the Council of Ministers of the USSR, and other measures. The most important of them are: the 1977 Soviet Constitution; the USSR Citizenship Act of 1978; the 1970 Rules on the Entry into and Departure from the USSR; the 1961 Fundamentals of Civil Legislation of the USSR and the Union Republics; the 1968 Fundamentals of Legislation of the USSR and the Union Republics on Marriage and the Family, and the 1961 Fundamentals of Civil Procedure of the USSR and the Union Republics. Some rules regulating the rights and duties of aliens in the USSR are also contained in the 1958 Fundamentals of Criminal Legislation of the USSR and the Union Republics, in the 1958 Law on Criminal Responsibility for Crimes against the State, in the 1968 Soviet Merchant Marine Code, in the 1961 Soviet Air Code, in the 1973 Statute on Discoveries, Inventions and Innovations, and in the criminal, civil, family and procedural codes of the Union republics.

Legislation on the legal status of aliens in the Soviet Union has changed over the years along with the national economy and the class pattern of Soviet society and the position of the first socialist country in the world.

The development of Soviet legislation on aliens in the period from the October Socialist Revolution to the triumph of socialism in the USSR and adoption of the 1936 Constitution can be divided into two stages. In the first stage, from October 1917 to the formation of the Soviet Union in 1922, the legal status of aliens was determined by the statutes enacted in different Soviet republics. In the second stage,

[1] See the Law of the Polish People's Republic, Private International Law, issued on November 12, 1965; the Law of the Czechoslovak Socialist Republic, On Private International Law and Procedure, issued on December 4, 1963 (*Sbornik izbrannykh dokumentov po mezhdunarodnomu chastnomu pravu* [Selected Documents in Private International Law], Issue 1, Moscow, 1967, pp. 10-44).



after the formation of the Soviet Union in 1922, the legal status of aliens mainly came under the purview of Union laws, some republican enactments continuing in force as well.

To be referred to the enactments of the first stage is above all the 1918 Constitution of the RSFSR and the following decrees: the Decree on the Right of Asylum (subsequently included in Art. 21 of the 1918 Constitution of the RSFSR), issued by the All-Russia Central Executive Committee on March 28 (15), 1918; the Decree on the Entry of Foreigners from Abroad into the Territory of the RSFSR, issued by the Council of People's Commissars of the RSFSR on October 20, 1921, and the Decree on the Departure Abroad of Citizens of the RSFSR and Aliens, issued on May 10, 1922. On August 29, 1921, a Decree on the Order of Deportation of Aliens from the RSFSR was adopted which ruled that subject to deportation from the RSFSR were aliens whose activities and conduct were found to be incompatible with the principles and mode of life accepted in the Soviet Republic.

Some decrees were also issued in Georgia, the Ukraine and other republics. A decree establishing the principle of equality of aliens and local citizens was issued on August 8, 1921 in Georgia. In the Ukraine, separate decrees were replaced by special Rules on Aliens in the Ukrainian SSR and on the Order of Acquisition and Loss of Ukrainian Citizenship, issued on March 28, 1922. Similar Rules on Aliens were adopted on August 4, 1922 in Byelorussia.

These rules supplied detailed instructions on the legal status of aliens. The Ukrainian Rules, for example, said that aliens in the Ukraine were subject to its laws and authorities and had the same rights and duties as Ukrainian citizens, with the exceptions mentioned in the Rules, that they had the right of appeal to government agencies and the courts, enjoyed protection of their personal and property rights and interests, incurred responsibility for criminal and political offences, and so on. The Rules gave a definition of the notion of *alien* and dealt with the property, inheritance and other rights of aliens, marriages between aliens and between aliens and Ukrainian citizens, entry and departure, extradition, deportation, acquisition of Ukrainian citizenship rights, and so on.

No such uniform statutes but decisions on different points of the status of aliens existed in the Russian Federation and the Transcaucasian Soviet Federative Socialist Republic. The civil status of aliens was defined, in the first place, in the Civil Codes of the republics. Civil capacity of aliens was dealt with in Art. 8 of the Decision on Putting into Effect the Civil Code of the RSFSR (as published on November 23, 1922) and similar articles of the laws introducing the Codes of other Union republics. A Law on the Rights of Aliens and Foreign Legal Persons similar in content to these articles was issued on April 5, 1923 in the Transcaucasian Republic.

Art. 8 of the Decision on Putting into Effect the Civil Code of the RSFSR, which determined the legal capacity of aliens, is related in content to Art. 5 of the Code, enumerating the rights of Soviet citizens, such as the right to travel, choose an occupation, acquire and alienate property, make transactions and assume obligations, and the right to set up industrial and trading establishments, observing all decisions on the regulation of industrial and trading activities and protection of labour. The list reflects the fact that the Code was adopted early in the period of the New Economic Policy (NEP) when state-controlled private enterprise was allowed on a limited scale.

Article 8 placed aliens in principle in the situation equal to that of the Soviet citizens. At the same time, it stated that the central bodies of Soviet government could restrict the right of aliens to free movement and choice of occupation, the right to open and buy trading and industrial establishments and own buildings and land.

After the formation of the Soviet Union and adoption of the first Constitution of the USSR in 1924, the legal status of aliens was regulated mainly by Union laws, the basic tendencies of law on aliens, however, continuing unchanged.

Under a decision, adopted on June 26, 1925, aliens residing in the USSR for purposes of employment were allowed the use of land for cultivation on an equal footing with Soviet citizens. Some categories of aliens were allowed to join consumer, housing and producer co-operatives. However, they could not elect or be elected either to the managing or auditing organs of these co-operatives.



That period also saw the publication of other all-Union measures. One of them, the Decision of the Central Executive Committee and the Council of People's Commissars of the USSR, On Aliens Sojourning or Residing Permanently in the USSR, issued on September 3, 1926, is effective, with some amendments, to this day. This decision divides all aliens present on the territory of the USSR into two categories, viz. (a) those sojourning and (b) those residing permanently in the USSR. The latter category consists of persons who legitimately reside in the USSR and who have pursued for at least eighteen months some kind of activity not prohibited by law. All the other aliens present on the territory of the USSR are considered to be sojourning.

In the field of civil law, Art. 8 of the Decision on Putting into Effect the Civil Code of the RSFSR continued in force with the exception of the right to set up trading and industrial establishments. After the early years of the New Economic Policy, this right was not granted any longer to Soviet citizens either. Changes in the rights of aliens were due to the abolition of the private sector of the national economy.

As the Soviet state developed, the laws regulating the economic activities of aliens on Soviet territory underwent a change.

The triumph of socialism and the strides made by the Soviet economy led to the abolition of the early forms of business activity of capitalist entrepreneurs on the territory of the Soviet Union.

The 1977 Constitution of the USSR introduces in Chapter 6 ("Citizenship of the USSR. Equality of Citizens' Rights") a special rule referring to the legal status of foreign citizens in the USSR. Art. 37 of the Constitution proclaims: "Citizens of other countries and stateless persons in the USSR are guaranteed the rights and freedoms provided by law, including the right to apply to a court and other state bodies for the protection of their personal, property, family and other rights.

"Citizens of other countries and stateless persons, when in the USSR, are obliged to respect the Constitution of the USSR and observe Soviet laws."

The legal status of aliens in the Soviet Union is also

regulated by rules contained in the laws, decrees of the Presidium of the Supreme Soviet of the USSR, decisions of the Council of Ministers of the USSR, and other measures.

Apart from that, the legal status of aliens in the USSR is also regulated by international treaties concluded by the USSR. Article 129 of the Fundamentals of Civil Legislation of the USSR and the Union Republics, Article 64 of the Fundamentals of Civil Procedure, Article 55 of the Fundamentals of Public Health Legislation of the USSR and the Union Republics[1] proclaim that should an international treaty or agreement in which the Soviet Union participates establish rules different from those contained in the laws of the Soviet Union and the Union republics, the rules established by the international treaty or agreement shall apply. Rules of inheritance, for example, as laid down in some treaties on legal aid in civil, family and criminal cases, concluded by the USSR with other socialist countries, differ from the rules set out in Art. 127 of the Fundamentals of Civil Legislation. It is quite obvious that questions of inheritance arising between Soviet citizens and citizens of the countries with which the treaties on legal aid were concluded are not settled in accordance with Art. 127 of the Fundamentals but in accordance with the treaties. National enactments issued to execute the international treaties and agreements concluded by the Soviet Union retain their legal force even if later on special laws were adopted on the same questions, settling them in a different way.

Domestic legislation on aliens usually refers to all aliens, irrespective of their nationality, whereas treaty provisions are applied only to citizens of the other Contracting Party.

Many international treaties concluded by the Soviet Union with foreign countries contain rules regulating the legal status of aliens. Even before the formation of the Soviet Union, some Soviet republics (the Russian Federation above all) had concluded treaties which contained special rules on the rights of aliens, viz. the Anglo-Soviet Trade Agreement, signed on March 16, 1921; the Agreement

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[1] See *Fundamentals of Legislation of the USSR and the Union Republics*, pp. 203, 231, 86.



of the RSFSR and the Ukraine with Austria, signed on December 7, 1921; the Treaty between the RSFSR and Germany, signed at Rapallo on April 16, 1922, and others.

In the same period, special agreements were concluded on the exchange of prisoners of war and civilian internees. These issues were also dealt with by peace treaties and agreements between the RSFSR and contiguous countries on the departure of the latter's citizens to their respective countries, on the conveyance and liquidation of their property, and so on.

The years 1924 and 1925 went down in history as the time of diplomatic recognition of the first socialist country in the world by capitalist countries. Whereas early under Soviet rule this country concluded international agreements with merely a few foreign countries, after 1924 the number of such treaties abruptly increased. As many of them were trade treaties which touched, among other things, on the rights of aliens, treaty regulation of the legal status of aliens in the USSR advanced considerably.

The Treaty on Trade and Navigation concluded with Italy on February 7, 1924, which regulated in detail trade and other economic relations, was characteristic of the times. Some of its articles dealt with the legal status of aliens. Under Art. 4, citizens of both Contracting States had the right of entry into the other country for purposes of employment or for any other reasons. They were allowed to engage in commerce, industry or mental or physical work so long as they observed the rules of the two countries, and on reciprocal conditions.

On March 15, 1924, a trade agreement was concluded with Sweden, and on October 12, 1925, a treaty with Germany. The treaty with Germany was especially detailed. It consisted of several agreements, one of them on settlement and legal defence.

In 1925, a treaty with Norway was signed and treaties and conventions concluded with China and Japan, and in 1926-1929, trade treaties and agreements with Turkey, Persia, Iceland, Yemen, and Greece.

Thanks to the growing political prestige and economic potential of the Soviet Union and its willingness to develop business contacts with all countries, more international treaties and agreements were concluded. Before 1941,

trade agreements had been signed with Finland and other countries, which contained provisions on the legal status of aliens.

After the war, the USSR concluded some more trade treaties with foreign countries. As international co-operation developed, special agreements on the status of aliens were signed.

The treaties on legal aid in civil, family and criminal cases concluded by the USSR with many socialist and some developing countries (e. g. Iraq) to ensure reciprocal recognition and observance of the property and personal rights were of special importance to the regulation of the rights of aliens.

Rules referring to aliens are also to be found in the consular conventions concluded by the Soviet Union with all socialist and many developing and capitalist countries.

The legal status of aliens in the USSR is characterised above all by *national treatment*.

The purpose of national treatment as an accepted rule of international law is to provide legal safeguards of the civil rights and duties of aliens on the territory of the state offering such treatment.

By reason of this principle which has always been observed in the Soviet Union and which meets the requirements of international law, an alien in the USSR enjoys the same legal capacity as Soviet citizens, with very few exceptions. An alien's legal capacity does not depend on his domicile in the USSR.

From the principle of national treatment it simultaneously follows that an alien in the USSR cannot claim any civil rights other than those enjoyed by Soviet citizens under Soviet laws, nor can he claim any privileges or exemptions from the Soviet laws. For instance, aliens may not acquire the right of ownership to land, subsoil, waters or forests as these objects are the exclusive property of the state (Art. 95 of the Civil Code of the RSFSR).

In accordance with the Fundamentals of Civil Legislation of the USSR and the Union Republics (Art. 122), the legal capacity of a foreign citizen follows the law of the country whose citizen he is, while the legal capacity



of a stateless person follows the law of the country in which he is domiciled.

The legal capacity of foreign citizens and stateless persons with respect to transactions carried on in the Soviet Union and to obligations arising from causing damage in the USSR is defined in accordance with Soviet law.

Foreign citizens and stateless persons residing permanently in the USSR may be deemed legally incapable fully or partly, in the manner established by the laws of the USSR and the respective Union republic.

National treatment may be extended to aliens on the basis of an international agreement or national law.[1] Currently, international treaties do not insist on national treatment of aliens in every legal respect. Numerous multi- and bilateral agreements between states regulating the status of aliens usually mention the sphere of rights to which national treatment is extended, without stating the specific rights which are set out in national law.

National treatment may be granted exclusively on the basis of national law when it is not required that the granting of rights in one sphere or another in which national law gives equal rights to aliens and citizens should be stipulated in the international agreement. Apart from that, the international agreement grants national treatment solely to aliens from the Contracting States, whereas the state concerned may grant by law certain rights to all aliens present on its territory.

Aliens in the Soviet Union enjoy unconditional national treatment. It means that no court or any other official body dealing with an alien's rights may make such rights dependent on whether or not they are reciprocated. An alien claiming a right which follows from Soviet laws is

[1] Before the complex of Union and republican laws on the legal status of aliens and stateless persons in the USSR was adopted in the 1960s and 1970s, the principle of national treatment was proclaimed in Arts. 5 and 8 of the 1922 Civil Code of the RSFSR, now inoperative. The legal capacity of aliens was defined as equal to that of Soviet citizens but it could be limited by decisions of competent bodies. Article 8 stated that the right to travel and settle in the USSR, choose an occupation, buy and sell property, perform transactions and assume obligations, granted by Art. 5, could be limited in the case of aliens by decisions of central government bodies of the RSFSR by agreement with the People's Commissariat of Foreign Affairs.

not required to show that in his country Soviet citizens are granted similar rights following from the laws of that country.

The principle of reciprocity is applied exclusively in settling the question of the rights of aliens with respect to their inventions or of registering in the USSR a trademark in an alien's name. This principle is also applied with respect to the remittance of money to an alien residing abroad.

If an alien enjoys national treatment in the Soviet Union, Soviet citizens naturally must be granted national treatment, without any discriminatory exceptions or limitations. Granting aliens unconditional national treatment, Soviet law simultaneously stipulates that the government—the Council of Ministers of the USSR—may introduce retaliatory restrictions with respect to citizens of certain countries where there exist restrictions of civil capacity or civil procedural rights of Soviet citizens.

National treatment implies that the state grants aliens only civil rights and freedoms such as its own citizens enjoy, and imposes on aliens civil duties such as are imposed on its own citizens, with the exceptions established specially for aliens in each specific case.

Aliens in the USSR, like Soviet citizens, enjoy the following civil rights:

a) the right to have property in personal ownership. The Fundamentals of Civil Legislation of the USSR and the Union Republics state: "Property designed to satisfy the material and cultural requirements of citizens may be in their personal ownership. Every citizen may have in his personal ownership income and savings earned by his labour, a dwelling house (or part thereof) and subsidiary husbandry, household effects and furnishings and articles of personal use and convenience. The personal property of citizens may not be used to derive unearned income" (Art. 25);

b) the right to use dwelling houses and other property;

c) the right to inherit and bequeath property;

d) the right to choose an occupation and a domicile. The Fundamentals of Public Health Legislation of the USSR and the Union Republics contain two articles relating to aliens. They allow aliens and stateless persons who



reside permanently in the Soviet Union and who were trained at higher or specialised secondary schools in the USSR to practise as doctors or pharmacists in accordance with their qualifications. Persons who were trained as doctors or pharmacists abroad may be allowed to practise in the USSR under conditions established by Soviet laws;

e) authorship rights to works of science, literature or art; the right to discoveries, inventions and innovations. According to Art. 7 of the 1973 Statute on Discoveries, Inventions and Innovations, foreign citizens who are authors of inventions or innovations and their assignees (including legal persons) enjoy the rights proclaimed in the Statute and other enactments on equal terms with citizens (legal persons) of the Soviet Union.

Regarding scientific discoveries, aliens enjoy equal rights with Soviet citizens if the discovery was made jointly with a Soviet citizen or when working at an industrial or other establishment on the territory of the Soviet Union[1];

f) the right to have other property and personal non-property rights. Foreign citizens have the right to participate in all civil contracts and transactions in which Soviet citizens may participate (purchase and sale, gift, lease, and so on).

On the basis of national treatment, aliens in the Soviet Union enjoy social and economic rights such as the right to work, rest and leisure, maintenance in old age and in case of sickness or disability, and the right to education. These rights extend to aliens residing and working permanently on the territory of the USSR, and they may also be granted under international agreements.

Foreign citizens and stateless persons residing on the territory of the USSR have the right to receive an education in the Soviet Union on the same footing as Soviet citizens, in accordance with the laws of the USSR (Art. 64 of the Fundamentals of Legislation on Public Education). Foreign citizens and stateless persons residing permanently in the USSR are given medical assistance on the same footing as Soviet citizens (Art. 32 of the Fundamentals of Public Health Legislation of the USSR and the Union Republics). Medical assistance is rendered to foreign citizens and state-

[1] *SP SSSR*, No. 19, 1973, Item 109.

less persons sojourning in the USSR in accordance with the arrangements made by the Soviet Public Health Ministry.

All aliens, whether paying a visit to or residing permanently in the Soviet Union, enjoy the civil freedoms proclaimed in Articles 50, 52, 54, 55 and 56 of the 1977 Constitution of the USSR. These freedoms are also a part of national treatment in the USSR. They are:

freedom of speech, if it is not used against Soviet public and state security;

freedom of conscience which comprises freedom of worship and of anti-religious propaganda;

inviolability of the person, whereby no one may be arrested except by a court decision or on the warrant of a procurator,[1] inviolability of the home and privacy of correspondence protected by the law.

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[1] Under Art. 32 of the Fundamentals of Criminal Procedure, the agency of inquiry (the militia) or the investigator have the right to detain a person suspected of a crime. Each time a suspect is detained, the agency of inquiry or the investigator must make a record showing the reasons of detention, and notify the procurator thereof within twenty-four hours. Within forty-eight hours after notification, the procurator must either issue his sanction to detain in custody or release the detained person.

Each time an alien is arrested or detained the fact is reported to the embassy or consulate of the state whose citizen he is. Members of the embassy or the consulate of the foreign state concerned may visit the detainee or convict.

In accordance with Art. 12 of the Consular Convention between the Union of Soviet Socialist Republics and the United States of America, concluded on June 1, 1964, and the Protocol to the Convention, the consulate must be notified about the fact that a national of the sending state has been arrested or otherwise detained within one to three days from the time of arrest or detention depending on conditions of communication. A consular officer may visit or communicate with a national of the sending state who has been arrested or otherwise detained within two to four days of the arrest or detention of such national depending upon his location. The right of a consular officer to visit and communicate with a national arrested or otherwise detained or serving a sentence of imprisonment is accorded on a continuing basis.

To quote another example, the Consular Convention between the USSR and the Republic of Iraq, concluded on April 9, 1972, states: "The consular officer has the right without delay to visit and communicate with a national of the sending country who is under arrest or otherwise detained or serving a prison term. The said rights shall



Aliens in the USSR enjoy a wide range of rights making it possible for them to take part in public organisations. So, in accordance with Points 60 and 63 of the Statute on the Higher Educational Establishments in the USSR and Points 54-56 of the Statute on the Specialised Secondary Schools of the USSR, foreign citizens admitted to Soviet colleges and specialised secondary schools may unite in associations of countrymen (leagues or unions), join student scientific societies, participate in research conducted by college departments, join athletic, scientific and technical societies, student construction teams and amateur groups.

Foreign citizens employed as industrial or office workers in the Soviet Union have the right to join Soviet trade unions. Those who do not belong to Soviet trade unions enjoy the unions' protection nevertheless as the Soviet trade unions represent the interests of all industrial and office workers, irrespective of their membership in a trade union (Art. 1 of the Soviet Trade Union Rules).

Aliens may join different co-operative organisations (consumer, country house- or garage-building, etc).

Rules of many Soviet scientific societies provide for election to them of eminent foreign scientists.[1]

Aliens residing permanently in the USSR may set up organisations (voluntary societies) of their own. There is, for instance, a Society of Greek Emigrants and a Society of Iranian Emigrants.

In accordance with the commonly accepted rules of international law, and on the basis of international treaties and agreements concluded by the Soviet Union, aliens may

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be implemented in conformity with the laws and rules of the country of sojourn subject to the proviso that the said laws and rules shall not cancel these rights" (Art. 36).

There is a similar article in the Consular Convention between the USSR and the Arab Republic of Egypt, concluded on May 27, 1971 (Art. 39).

[1] See Para. 5 of the Standard Rules of Voluntary Scientific Societies Attached to the USSR Academy of Sciences; Para. 9 of the Rules of the Soviet Geographic Society; Para. 6 of the Rules of the Vavilov National Society of Geneticists and Plant-Breeders; Para. 6 of the Rules of the National Microbiological Society, and Para. 6 of the Rules of the Pavlov National Physiological Society.

also enjoy such privileges as are not envisaged in Soviet law.

National treatment of aliens implies their right to legal protection. Protection of civil rights in the USSR may be obtained from courts of law and courts of arbitration, and, where legally prescribed, also from comrades' courts, trade unions and other public organisations. In some cases, civil rights may be protected administratively (Art. 6 of the Fundamentals of Civil Legislation). The Fundamentals of Civil Procedure of the USSR and the Union Republics state also that foreign citizens have the right to apply to Soviet courts and to proceed on equal terms with Soviet citizens (Art. 59).

Injury to health or property entails, under Art. 88 of the Fundamentals of Civil Legislation, a civil obligation to make compensation. As well as Soviet citizens, aliens may appear as parties or one of the parties in cases involving tortious obligations. An alien may sue and be sued or he may appear as a third party, whether or not suing on his own behalf.

Civil capacity of aliens does not depend on residence in the Soviet Union. Aliens residing permanently abroad may own or inherit property in the Soviet Union according to the right to personal property. An alien who does not reside in the Soviet Union may not be refused judicial protection in the Soviet Union if his suit is such as may be considered by a Soviet court.

Special provisions on legal protection of the rights of aliens are often included in trade agreements concluded by the USSR.

Questions of legal protection of the rights of aliens are dealt with in treaties on legal aid concluded by the USSR.

To quote an example, Art. 1 of the Treaty between the USSR and Hungary on Legal Aid Regarding Civil, Family, and Criminal Cases states: "Citizens (physical and legal persons) of one Contracting Party shall enjoy the same legal protection of person and property on the territory of the other Contracting Party as is given to the citizens of the latter.

"Citizens of one Contracting Party may appear in the bodies of the other Contracting Party which deal with civil, family and criminal cases, and file suits, applications and



complaints on the same footing as citizens of the other Contracting Party."[1]

In settling a dispute in which an alien takes part, the Soviet court in principle applies only Soviet procedural laws. The principle of law of the court (*lex fori*) thus becomes operative. This principle may be waived only where so stipulated by an international treaty concluded by the Soviet Union, subject to conditions stipulated by such treaty.

Soviet courts may apply foreign rules of procedure as stipulated by the treaties on legal aid concluded between the USSR and some socialist countries. The treaties stipulate that in rendering legal aid, i.e. performing certain procedural acts, courts and other bodies may, at the request of the judicial bodies of the other country, apply certain rules of procedure practised in that country, if they do not contradict the laws of the country of the court. Consequently, a Soviet court may follow foreign procedure, in accordance with the said treaties, solely when performing specific acts of procedure in rendering legal aid.

Under the Law on the State Notary Office, issued in 1973, foreign citizens may apply to notary offices and other similar bodies of the USSR. The right to apply to notary offices and consular bodies of the USSR is also enjoyed by foreign industrial establishments and organisations (Art. 26).

Besides giving aliens equal civil rights with Soviet citizens, national treatment also serves to impose duties on them such as follow from Soviet civil legislation.

The following are an alien's absolute duties:

non-interference in the internal affairs of the USSR in whatever manner or for whatever reason;

respect for national customs and rules of socialist society;

observance of the laws and the existing law and order.

For unlawful actions performed by them on the territory of the USSR, aliens incur civil, administrative or criminal responsibility.

Aliens residing in the Soviet Union permanently or temporarily (e.g. foreign journalists, sportsmen, tourists, seamen, air crews, train crews, private visitors, delegation

[1] *Vedomosti Verkhovnogo Sovieta SSSR*, No. 35, 1958.

members, as well as aliens who have been given political asylum in the Soviet Union, are fully subject to the jurisdiction of the Soviet Union.

Article 4 of the Fundamentals of Criminal Legislation of the USSR and the Union Republics says: "The question of the criminal responsibility of diplomatic representatives of foreign states and of other citizens who, under the laws and international agreements in force, do not come within the jurisdiction of Soviet judicial institutions in criminal cases, shall, in the event of such persons committing a crime on the territory of the USSR, be decided by diplomatic means".[1]

In accordance with the Statute on Diplomatic and Consular Representations of Foreign States in the USSR, approved by the Decree of the Presidium of the Supreme Soviet of the USSR of May 23, 1966,[2] exterritoriality is enjoyed by the following persons:

1) foreign heads of state and government members on an official visit to the Soviet Union;

2) diplomatic representatives of foreign countries (ambassadors, envoys, councillors, attachés, embassy secretaries) and their wives and minor children,

3) others who belong to a diplomatic representation and are citizens of respective states (correspondents, embassy staff, and so on).

The circle of persons enjoying exterritoriality is determined by an agreement between the countries concerned on the basis of reciprocity.

The Soviet Union, which always meticulously carries out its international commitments, abiding by the rules of international law and the customs of intercourse with foreign states, has established all the necessary legal rules to determine the content and volume of diplomatic immunity and persons (foreign citizens) enjoying it.

In accordance with the Statute on Diplomatic and Consular Representations of Foreign States in the USSR, the head and personnel of diplomatic missions are exempted from criminal, civil and administrative jurisdiction of the USSR and the Union republics. They enjoy personal immunity which means that they may not be arrested or detained. Such persons may, however, be subject to the jurisdiction of the USSR and the Union republics, should their country clearly indicate its consent.[1]

Diplomatic immunity extends also to the premises occupied by persons enjoying it, and to their vehicles, which may not be searched, unless consent has been obtained through diplomatic channels, and otherwise than in the presence of a representative of the Soviet Ministry of Foreign Affairs.

The immunity of the premises of a diplomatic representation does not, however, entitle its personnel to harbour persons there who are wanted by the Soviet Government for the crimes they have committed. Nor does such immunity entitle them to detain anybody there against his wish. Article 7 of the Statute specifically states: "The immunity ... of the premises and vehicles does not constitute a right to employ them for purposes inconsistent with the functions of a diplomatic representation."

Article 10 of the Statute determines that personal immunity and exemption from criminal jurisdiction of the USSR and the Union republics are enjoyed by embassy staff members and their families, if such staff members and their families are not Soviet citizens and do not reside permanently in the USSR.

Characteristic in this respect are the agreements concluded by the Soviet Union with the United States, Great Britain, the Federal Republic of Germany, and Canada, which extend diplomatic privileges and immunities to all employees of the diplomatic representations of these countries on a reciprocity basis.

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[1] *Fundamentals of Legislation of the USSR and the Union Republics*, p. 239.

[2] See *Vedomosti Verkhovnogo Sovieta SSSR*, No. 22, 1966, Item 387; the Vienna Convention on Diplomatic Relations, ratified by the Presidium of the Supreme Soviet of the USSR on February 11, 1964 (*Ibid.*, No. 18, 1964, Item 221).

[1] Under the Statute, the head and personnel of a diplomatic representation are not exempted from local civil jurisdiction where they form legal relations in their private capacity, suing for buildings belonging to them on the territory of the USSR or for inheritance or engaging in activities transcending their official functions (Art. 13). The head and members of a diplomatic representation are exempt from taxation, whether national or local, and duties, by mutual arrangement between the countries concerned (Art. 14) (*Vedomosti Verkhovnogo Sovieta SSSR*, No. 22, 1966).

Consular conventions concluded by the Soviet Union with some socialist countries as well as with Great Britain, Finland, Sweden, Japan and other countries contain special privileges for members and employees of these countries' consulates whom they put on the same footing as members of diplomatic representations.

Consular officials enjoy limited immunity from criminal jurisdiction of the USSR and the Union republics so far as the performance of their duties is concerned. Article 28 of the Statute points out that they may also be granted other immunities on the basis of special agreements.

Limited immunity from criminal jurisdiction of the USSR and the Union republics is also granted under the Statute to representatives of foreign countries, members of parliamentary or government delegations and their employees who come to the USSR on official business. These persons, when on transit through the territory of the USSR, enjoy personal immunity and other protection necessary for safe travel, and may be prosecuted for crimes committed by them beyond the boundaries of the USSR solely where this is stipulated by international agreements.

Any criminal offence committed on the territory of the Soviet Union is punishable regardless of whether it encroaches on the interests of the Soviet Union or those of a foreign state and foreign citizens protected by Soviet laws (Art. 10 of the Law of the USSR on Criminal Responsibility for Offences against the State and Art. 101 of the Criminal Code of the RSFSR) and regardless of whether the victim is a Soviet citizen, a stateless person or an alien.

Crimes perpetrated against aliens within the boundaries of the Soviet Union come within the jurisdiction of Soviet courts and are prosecuted at the place where they were committed even if both victim and offender are aliens. Prosecution will go on whether the victim is in the Soviet Union or abroad. For instance, extortion whose victims are aliens residing abroad and which was committed in the Soviet Union comes within the jurisdiction of Soviet courts under Soviet criminal law whether the accused is a Soviet citizen or an alien.

Article 5 of the Fundamentals of Criminal Legislation proclaims the universal principle of Soviet criminal law that "for crimes committed outside the boundaries of the



USSR, aliens incur responsibility under the Soviet criminal law in the instances provided for by international agreements". This rule is reproduced verbatim in the Criminal Codes of the Union republics.

This rule implies (1) that an alien incurs no criminal responsibility under Soviet laws, except as stipulated by international agreements, for crimes committed abroad, even if they harm the interests of the Soviet Union or its citizens; and (2) that Soviet criminal laws are applied to aliens who have committed a crime abroad not in all cases which are mentioned by international agreements, but only when these international agreements specially point out the duty of each Participating State to exercise its criminal jurisdiction with relation to the crimes mentioned by the agreements, irrespective of where and by whom committed.

Therefore, Soviet criminal laws may be applied to aliens who have committed crimes abroad within fairly narrow limits. This results from the fact that the principle of the operation of the national criminal laws is enunciated but rarely in international conventions for the elimination of international and other crimes seeking to upset international law and order. To quote an example, the four Geneva Conventions of August 12, 1949 for the protection of war victims, which envisaged international legal measures to curb war crimes, charged the participating states to introduce national laws imposing effective criminal punishments for the crimes enumerated, to search for persons accused of such crimes, and try them, whatever their citizenship. If found on the territory of the Soviet Union, aliens guilty of crimes enumerated in the Geneva Conventions of August 12, 1949, which they committed not in the USSR, are to be punished in conformity with Soviet laws.

In accordance with the Geneva Conventions, the Soviet Law of December 25, 1958, On Criminal Responsibility for Military Crimes, as well as the Criminal Codes of all Union republics, meted out punishment for the crimes enumerated in the Conventions (Arts. 30-33).

The Convention on the Prevention and Punishment of the Crime of Genocide of December 9, 1948 illustrates a different approach to the responsibility of aliens.

When the Convention was signed, the participating states undertook to pass appropriate legislation imposing severe punishment on persons guilty of genocide and other crimes mentioned in the Convention. The Convention considered the crime of genocide to be within the jurisdiction of competent courts of the state on whose territory the crime was committed or to be triable by an international criminal court which may exercise jurisdiction with relation to the participating states which should recognise the jurisdiction of such court. Under this Convention, therefore, a state cannot apply national criminal law to aliens who have committed genocide outside of this state.

Thus, Soviet criminal law is applied to aliens who have committed crime outside of the Soviet Union not because the latter participates in an international agreement for the elimination of certain international crimes, but because the agreement invokes the rule of international law on the application of the criminal law of the state in which the criminal is found. The Soviet Union is a party to many international conventions concluded for the elimination of international and other crimes. Not all of them, however, provide for the use of national criminal law in line with the universal principle.

International agreements are concluded for the purposes of fighting both international crimes and crimes threatening international law and order. International crimes, according to the Charter of the International Military Tribunal, are crimes against peace, war crimes, and crimes against humanity.

Crimes against peace consist in planning, preparation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances or participation in a common plan or conspiracy for the accomplishment of any of the foregoing.

War crimes are violations of the laws or customs of war, such as murder, ill treatment or deportation to slave labour or for any other purpose of civilian population of or in occupied territory, murder or ill treatment of prisoners of war or persons in the sea, killing of hostages, plunder of public or private property, wanton destruction of cities, towns and villages, or devastation not justified by military necessity.



Referred to the crimes against humanity are murder, extermination, enslavement, deprivation, and other inhumane acts committed against any civilian population, before or during the war, or persecution on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the national law of the country in which they were committed.

Citizens of the USSR guilty of a crime (if it is not an international crime) may not be extradited to a foreign country for examination, trial or punishment. This principle follows directly from the legal nature of citizenship which implies protection by the state of its citizens from any claims on the part of a foreign country. Therefore, only an alien or a stateless person who has committed a crime outside of the Soviet Union may be the subject of extradition. Exceptions from this rule are:

political emigrés[1] granted the right of asylum under Art. 38 of the Soviet Constitution;

persons with respect to whom sentence or a decision was passed, and came into force, to stop proceedings in the case.

Soviet law currently contains no rules on the conditions and procedure of extradition. These issues are settled on the basis of bilateral agreements on legal aid between the Soviet Union and other countries,[2] by agreements conclud-

[1] The USSR grants the right of asylum to foreigners persecuted for defending the interests of the working people and the cause of peace, or for participation in the revolutionary and national liberation movement, or for progressive social and political, scientific or other creative activity. Such persons enjoy all civil, socio-economic and political rights, except the right to vote, and are obliged to carry out all duties of Soviet citizens, except military service. They are fully subject to the criminal, civil and administrative jurisdiction of the USSR, and obliged to observe the Soviet laws and not to interfere in the internal affairs of the state. While ordinary aliens may, under international agreements or with the consent of the state, be extradited at the request of other states for crimes they have committed, political emigrés are guaranteed non-extradition by the Soviet state.

[2] The principle of non-extradition of a state's own citizens is proclaimed in the criminal laws and laws on criminal procedure of any socialist countries (see Art. 97 of the Yugoslav Criminal Code of 1951; Part 1, Para. 21 of the Czechoslovak Criminal Code of 1961;

ed by the Soviet Government with the Governments of Afghanistan, Iran and Finland on measures to counter the high-jacking of airliners, and by multilateral conventions on certain offences, e.g. the Hague Convention for the Suppression of Unlawful Seizure of Aircraft of December 16, 1970, and the Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation of September 23, 1971. Decisions on extradition may also be arrived at through diplomatic talks.

Under Art. 31 of the Fundamentals of Legislation of the USSR and the Union Republics on Marriage and the Family, marriages between Soviet citizens and aliens, or between aliens, on the territory of the USSR are concluded in accordance with the general rules, i.e. both the procedure and conditions of the conclusion of a marriage are regulated by the Code on Marriage and the Family of that Union republic on whose territory the marriage is concluded.

So, an alien who has not attained the marriageable age required by the Marriage and Family Code of the RSFSR, namely 18 years, may not insist on registration of the marriage even if by the laws of his country this person may marry.[1] An alien may not insist on the registration of a second marriage while the first marriage has not been dissolved, even if under the laws of his country polygamy is allowed.

On the other hand, there will be no obstacle to the registration of an alien's marriage if the essential requirements of the Soviet law are met, even if such marriage may not be concluded under the laws of his own country. For instance, a marriage between people of different races may be

Art. 118 of the Polish Criminal Code of 1969; Part 2, Art. 4 of the Bulgarian Criminal Code of 1968; Art. 17 of the Rumanian Criminal Code of 1948).

Extradition of a state's own citizens is prohibited by law (in some instances, by the Constitution) in most capitalist countries. Some countries (Great Britain, the USA, Austria, India, Canada and Israel) allow extradition of their own citizens on a reciprocal basis and where there is a treaty to that effect.

[1] Under the Soviet laws, the age requirement may be lowered only in exceptional cases, usually when conjugal relations have already been established, a pregnancy occurred or a child was born. Executive Committees of district (town) Soviets of People's Deputies have the right to lower the age of marriage in exceptional cases and by no more than two years (Art. 15 of the Marriage and Family Code of the RSFSR).



registered in the Soviet Union, even if the national law of one of the parties prohibits inter-racial marriages.

The fact, however, that such marriages are considered valid in the Soviet Union naturally does not mean that they will be considered valid in other countries. For this reason, at the registration of marriages between Soviet citizens and aliens, and where there are obstacles to a marriage under the national law of one of the parties, the registrar explains to the persons concerned that the validity of their marriage may be questioned in other countries.

In some instances the registrar asks the alien about to conclude a marriage with a Soviet citizen to present evidence in confirmation of the fact that there is no breach of the law (e.g. to present permission to conclude a marriage with an alien, where such permission is required by the laws of his or her country). This is necessary for the protection of the interests of the Soviet party, as the marriage may be considered invalid abroad unless the alien's national law is observed with all the consequences that entail for the spouse and the prospective children. The absence of such evidence, however, creates no obstacle to the registration of the marriage, if the parties, being apprised of the possible adverse consequences, should, nevertheless, insist on its registration.

Article 161, Part 3 of the RSFSR Marriage and Family Code (and the Codes of the other Union republics) lays down the rule that marriages between aliens concluded in the USSR at the embassy or consulate of a foreign state are considered valid in the RSFSR, on conditions of reciprocity, if the parties were at the time of the conclusion citizens of the state by which the ambassador or consul had been appointed. If, therefore, under the laws of the state by which the ambassador or consul has been appointed marriages concluded by Soviet citizens at the Soviet embassy (or consulate) are not considered valid on the territory of such state, then marriages concluded at its embassy (consulate) will also be considered invalid in the Soviet Union.

Marriages between aliens concluded outside of the Soviet Union and in accordance with the laws of the respective countries are considered valid in the USSR. Although the validity of a marriage concluded by aliens outside of the

USSR is judged in accordance with the foreign laws, not every breach of the foreign law is considered sufficient reason for not recognising the validity of a marriage between aliens. A foreign law cannot be applied in the USSR if it contravenes the fundamental principles of Soviet society. For this reason, should an alien claim that a marriage is invalid because it was concluded in defiance of the prohibition of inter-racial marriages, Soviet authorities will not consider such marriage to be invalid as race discrimination goes against the very grain of Soviet society.

Foreign laws on marriage and the family cannot be applied in the USSR, and certificates issued by the registry office on the strength of these laws cannot be recognised, should such application or recognition run counter to the principles of Soviet society, i.e. to the conception and basic principles of Soviet law. It must, however, be taken into account that the said rule refers to the appraisal of and attitude to one foreign law or another in general, and not its possible application in specific cases. Thus, the foreign law which allows polygamy contravenes the conception and basic principles of Soviet law which recognises monogamy alone, but it may be applied in individual cases. A Soviet court, for instance, has no right to refuse protection to a second wife (awarding her alimony or a part of property) if the marriage was concluded in a country in which polygamy is allowed. Yet, although the foreign law allowing polygamy conflicts with Soviet legal notions, its application in the above-mentioned case is completely in line with the basic principles of Soviet law which gives every possible protection to the rights of women.

In accordance with Soviet laws (Art. 163 of the Marriage and Family Code of the RSFSR), marriages between Soviet citizens and aliens as well as between aliens are dissolved in the USSR in accordance with the general practice. When dissolving such marriages, the Soviet court and registry offices apply the Soviet laws. Foreign laws are not applied in such cases, except when otherwise stipulated by an international treaty or agreement.

Recognition abroad of divorce granted by Soviet agencies depends on the laws of each country and international agreements concluded in that respect. In the eyes of Soviet law, anyway, the spouses will be divorced.



If both spouses are aliens, divorce granted abroad under the laws of respective countries is considered valid in the USSR, irrespective of their domicile.

If one of the spouses is an alien and the other, a Soviet citizen, the alien may ask not only a Soviet court (or a registry office where it is in its jurisdiction) for divorce, but also a court in the country where he lives. Should the divorce granted by a foreign court not be recognised, the result would be that the alien would be considered to be divorced and the Soviet citizen to continue in a married state. It would be unreasonable to demand that a second divorce be obtained, from a Soviet court. For this reason, if at the time of the dissolution of marriage at least one of the spouses, whether the alien or the Soviet citizen, resided abroad, the divorce granted by a foreign agency under the laws of a foreign country is considered to be valid. Soviet agencies do not question the validity of the decision passed by the foreign court. The certificate of divorce, issued to the foreign party and duly legalised, has the same force as the registration of divorce by Soviet authorities.[1]

If an alien adopts in the Soviet Union a child who is a Soviet citizen, the adoption is registered in accordance with the general practice. There is, however, one exception. It is that adoption may be registered only if a superior guardian grants permission. Such superior guardian is the Council of Ministers of an Autonomous republic or the Soviet of People's Deputies of a territory or a region. In Moscow and Leningrad it is the city Soviet.

Adoption may be registered either at the place of residence of the adopter or of the adoptee so that if the child resides in the Soviet Union, the adoption may take place in the Soviet Union also if the foreign adopters reside abroad.

[1] Papers need not always be legalised. Legalisation is not required if a foreign country has an agreement with the USSR on legal aid in civil, family and matrimonial and criminal cases. Article 25 of the Treaty between the USSR and the Mongolian People's Republic states: "Legally enforced decisions issued by the courts of one Contracting Party in cases of dissolution of a marriage ... involving citizens of the Contracting Parties shall be recognised on the territory of the other Contracting Party without further proceedings, unless a court of the other Contracting Party has passed a decision in the same case before, and the decision has come into force" (*Vedomosti Verkhovnogo Sovieta SSSR*, No. 35, 1958).

If the child concerned is a Soviet citizen and resides abroad, the foreign adopter must additionally obtain in each individual case permission of a duly authorised republican agency which is the Ministry of Education in the RSFSR and some other Union republics, and the Council of Ministers in a few other Union republics. Adoption of a child holding Soviet citizenship and residing abroad is registered in a Soviet embassy or consulate. Also valid is adoption of a child holding Soviet citizenship, which is formalised in the appropriate agencies of a state on the territory of which this child has its domicile, provided that the adoption has been permitted by an authorised agency of a Union republic, i.e. the RSFSR Ministry of Education or, in some other Union republics, the Council of Ministers.[1]

Adoption of children who hold foreign citizenship on the territory of the USSR takes place in accordance with the general practice. The law has no special rules of such adoption. Nevertheless, in conformity with the treaties on legal aid concluded by the Soviet Union, Soviet guardianship agencies inquire in advance a similar agency in the country of the adoptee whether it agrees to the adoption.

[1] See Art. 34 of the Fundamentals of Legislation of the USSR and the Union Republics on Marriage and the Family.

Such permission must be obtained in all cases, not only when the adopter is not a Soviet citizen.

When a child's adoption takes place not at the Soviet embassy (consulate), the Ministry of Education or the Council of Ministers of the Union republic whose citizen the adoptee is considers the matter in substance, i. e. ascertains whether the adoption is in the best interests of the child and verifies whether the conditions of adoption stipulated by the Soviet law are met.

Adoption of an alien in the USSR has the following legal consequences:

adoptees and their progeny with relation to adopters and their kin and the latter in respect of adoptees and their progeny have the same personal and property rights and duties as blood relatives;

adoptees lose personal and property rights and are absolved from duties to their parents and the parents' relatives;

if adopted by a single person, these rights and duties may be retained at the mother's wish, if the adopter is a man, or at the father's wish, if the child is adopted by a woman;

in the event one of the parents is dead, the rights and duties with respect to the relatives of the deceased parent may continue at the request of the parents of the deceased (the grandparents of the child), if the adopter does not object (Art. 108 of the RSFSR Marriage and Family Code).



As was already stated, the Soviet legal system and the international treaty practice adhere to the principle of granting aliens unconditional national treatment. This, however, does not mean that a state may not follow the principle of reciprocity in individual cases. Registration of trademarks in the USSR by foreign legal persons and individuals is allowed on condition that Soviet industrial establishments and organisations should be granted reciprocally the right to register trademarks in the applicant's country.[1] Money inherited by aliens is remitted abroad from the USSR also on the basis of reciprocity.[2]

Reciprocity is necessary for the settlement of matters respecting the recognition of marriages between aliens concluded in the USSR at embassies and consulates. Under Art. 31 of the Fundamentals of Legislation on Marriage and the Family, marriages between foreigners celebrated in the USSR at embassies or consulates of foreign states are considered, on condition of reciprocity, to be valid in the USSR if these persons at the time of the conclusion of the marriage were citizens of the state by which the ambassador or the consul was appointed.

If the principle of formal reciprocity is violated in individual countries and Soviet citizens are discriminated against, the Soviet Government applies retortion, i.e. retaliatory measures, with respect to citizens of such countries. Retortion ceases as soon as the rights of Soviet citizens are restored and discrimination against them is stopped.

In some cases, an alien may be granted certain rights depending on his residence in the Soviet Union. Such is, for instance, the case we already quoted, viz. that only foreign citizens who reside permanently in the USSR and who qualified from relevant colleges or specialised secondary schools are allowed to practise as doctors or pharmacists in the Soviet Union in accordance with their qualifications. Only such foreign citizens who reside permanently in the Soviet

[1] See the Decision of the Council of Ministers of the USSR on Trademarks of May 15, 1962, Art. 8 (*SP SSSR*, No. 7, 1962, Item 59).

[2] See the Decision of the Council of Ministers of the USSR of April 21, 1955, No. 781 (*Sbornik prikazov i instruktsii po finansovo-khozyaistvennym voprosam* [Collected Orders and Instructions on Financial and Economic Problems], No. 11, Moscow, 1959, p. 31).

Union may enjoy medical assistance on equal terms with Soviet citizens.

By dint of national treatment, aliens residing in the USSR enjoy such rights, among others, as do not exist in many capitalist countries, e.g. equal pay for equal work for men and women, or holidays with pay. In turn, the Soviet Union protects through its embassies and consulates in capitalist countries the civil rights and freedoms of Soviet citizens as well as their interests stemming from local national treatment and comprising some rights long abolished in the Soviet Union, e.g. the right to own land, to engage in private trade, and so on.

Some rights aliens may enjoy in the USSR only if there is a special agreement to that effect. Under inter-governmental agreements and plans of cultural, scientific and technical co-operation between the USSR and foreign countries, their citizens are admitted as students or researchers to Soviet colleges or scientific research centres respectively.

As has already been mentioned, national treatment implies for aliens practically the same civil, labour, family and other rights and duties as those of Soviet citizens. There are, however, some exceptions.

The most common of them is the restriction of political rights. Aliens do not, as a rule, enjoy the vote and other political rights in the host country, which constitute the privilege of citizens of that country and characterise their legal status. The Soviet law also states that persons who reside on the territory of the USSR and who are not Soviet citizens but foreign nationals may not elect or be elected to governing bodies.[1]

As to such political rights as freedom of the press, freedom of assembly, meetings, street processions and demonstrations, constitutionally guaranteed to Soviet citizens, they may be used by aliens with official permission. Dissemination of press publications in the Soviet Union by an alien requires special permission of the Soviet Government. To hold meetings on the territory of the USSR, aliens must have permission from the USSR Ministry of Internal Affairs.

[1] Article 9 of the Statute on Election to the Supreme Soviet of the USSR of January 9, 1950 (*Vedomosti Verkhovnogo Sovieta SSSR*, No. 2, 1950).



Some restrictions are imposed by law on aliens' rights with respect to certain trades and professions.

The restrictions are as follows:

In accordance with the USSR Merchant Marine Code, ships' crews may consist of Soviet citizens only. Exceptions from this rule may be made on instructions of the Council of Ministers of the USSR;

under Art. 19 of the Soviet Air Code air crews of civil aircraft may consist solely of Soviet citizens;

the staff of Soviet diplomatic, consular and trade representations in foreign countries may consist of Soviet citizens only[1];

under Art. 6 of the Mining Statute of the USSR, aliens and foreign legal persons allowed to operate on the territory of the USSR may be granted the right of mining solely with the permission of the Soviet Government, obtained in each case separately[2];

in accordance with Art. 7 of the Rules on the Protection of Fish Reserves and Regulation of Inland Fishery of September 15, 1958, foreign citizens and legal persons are forbidden to obtain commercially fish and other water animals and plants from water bodies of the Soviet Union, except when otherwise provided for in agreements concluded by the USSR and foreign countries.[3]

Foreign vessels fishing in Soviet territorial waters without due permission or having permission to fish but proceeding in disregard of the established fishery rules are to be detained and the guilty persons prosecuted under the laws of the USSR and the Union republics.

Illegally obtaining fur-seals and beavers, fish and other water products is a criminal offence (Arts. 163 and 164 of the

[1] See Art. 14 of the Consular Rules of the USSR; Art. 8 of the Vienna Convention on Diplomatic Relations; Art. 3 of the 1964 Consular Convention between the Union of Soviet Socialist Republics and the United States of America.

[2] *SZ SSSR*, No. 68, 1927, Item 688.

[3] *SP SSSR*, No. 16, 1958, p. 127.

Under the Agreement between the USSR and Finland of June 13, 1969, citizens of Finland may obtain fish and fur-seal in Soviet territorial waters (see *Sbornik deistvuyushchikh dogovorov, soglashenii i konventsii, zaklyuchonnykh SSSR s inostrannymi gosudarstvami*, Issue XXVI, International Relations Press, Moscow, 1973, pp. 307-314).

Criminal Code of the RSFSR and corresponding articles in the Criminal Codes of the other Union republics);

fishing, obtaining marine animals and plants, mining and working the shelf belonging to the USSR are exclusive to citizens of the USSR. Aliens may pursue these occupations in the USSR only on the basis of international agreements concluded by foreign countries and the Soviet Union.

Lastly, the Soviet Government draws up a list of Soviet cities, towns and districts closed to foreign visitors. Those who violate these rules incur official or criminal punishment.

As the scope and content of civil rights and freedoms as well as duties of an alien differ, and often quite materially, in different countries, national treatment may be supplemented by most favoured nation treatment which may be included as a clause in international agreements.[1] This makes it possible to ensure aliens equal rights and duties, without privilege or discrimination.

Most favoured nation treatment is granted only on the strength of an international agreement. National law contains no provisions of that kind.

With reference to the rights of aliens, most favoured nation treatment implies that aliens with whose country the Soviet Union has concluded an agreement with the most favoured nation clause in it are granted in a certain sphere of rights conditions as favourable as those granted to aliens from a third country in that same sphere of rights. The main purpose of most favoured nation treatment is, therefore, to make aliens equal in a certain sphere of rights, eliminating legal discrimination.

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[1] In some Soviet writers' view, the most favoured nation clause does not amount to the aliens' distinctive treatment in law. "The most favoured nation clause extends mainly to economic relations—trade relations above all," writes A. I. Mikulshin. "For this reason, it may have its effect only on certain rights of aliens (e.g. the right to engage in trade), but has nothing to do with the general rights (e.g. questions of employment). Therefore, where an isolated right of an alien is regulated, it is too early to speak of treatment as a sum-total of rules regulating rights and duties" (A. I. Mikulshin, "The Concept and Kinds of Treatment Afforded to Aliens", *Sovietsky yezhegodnik mezhdunarodnogo prava, 1972* [Soviet Yearbook of International Law, 1972], Nauka Publishers, Moscow, 1974, p. 184).

If the Contracting States agreed to grant each other most favoured nation treatment in a definite sphere of rights, it does not follow from it that the scope and content of the rights must be specified. Thus, most favoured nation clauses do not contain the rule itself but merely make a reference to the rules to be found either in international agreements or in national law. In this way the principle is fixed whereby physical and legal persons belonging to one Contracting State may be given by the other Contracting State the same rights and duties as the latter extends on its territory to citizens of a third state accorded most favoured nation treatment.

Unconditional most favoured nation treatment has become established as a principle of international law. Consequently, giving aliens equal rights and duties on the basis of most favoured nation treatment is incompatible with provisoes and clauses of a discriminatory nature. This is the legal essence of most favoured nation treatment.

In the Soviet Union, unconditional most favoured nation treatment implies that the civil rights as well as duties with respect to the host country which have been conferred upon aliens belonging to a country are extended automatically to aliens belonging to all other countries with which the Soviet Union has concluded agreements containing a most favoured nation clause. To quote an example, Art. 13 of the Treaty on Trade and Navigation between the USSR and Denmark, concluded on August 17, 1946, states: "Danish merchants and industrialists, physical and legal persons created in conformity with Danish laws, shall enjoy, with relation to their person and property, treatment as favourable as that accorded to citizens and legal persons of the most favoured nation in carrying on, either directly or through agents of their choice, economic activity on the territory of the USSR insofar as such activity is allowed by the laws of the USSR.

"Soviet national economic organisations and other legal persons created in conformity with Soviet laws equally as Soviet citizens shall enjoy, with respect to their person and property, as favourable a treatment as that enjoyed by citizens and legal persons belonging to the most favoured nation in carrying on, either directly or through agents of their choice, economic activity on the territory of Denmark

insofar as such activity is allowed by the laws of Denmark."[1]

Similar, if somewhat differently worded, provisions are contained in Art. 10 of the Soviet-Finnish Trade Treaty concluded on December 1, 1947. Under this Treaty, physical and legal persons enjoy on the territory of the Contracting Parties the same advantages, rights and privileges as are enjoyed by citizens and legal persons of the most favoured nation. As further examples one could mention also Art. 10 of the Treaty on Trade and Navigation between the USSR and Italy of December 11, 1948; Art. 4 of the Soviet-French Agreement on Trade Relations and the Status of the Soviet Trade Mission in France of September 3, 1951; Art. 10 of the Treaty on Trade and Navigation between the USSR and Austria of October 17, 1955; Art. 3 of the Agreement on General Questions of Trade and Navigation, concluded between the USSR and the Federal Republic of Germany on April 25, 1958; and so on.

All these agreements stress the unconditional nature of most favoured nation treatment with relation to the rights of aliens. At the basis of such treatment is, to repeat, the principle of equal treatment of aliens, regarding their rights and duties, on the territory of any state, without any discrimination. This is the essence and significance of most favoured nation treatment which automatically extends to all countries sharing this principle.

Of course, countries in their daily practice grant one another also special privileges which transcend the limits of most favoured nation treatment and are such as are possible only between neighbour states. In such cases, the agreement usually contains a clause stating that such special privileges are not to be extended to other most favoured nations. The purpose of this clause, which has become widespread in treaties, is to prevent special privileges from being automatically extended to other countries. Such special privileges relate to entry and departure without visas, social security, legal aid in civil, family and criminal cases, co-operation and mutual assistance on border issues, and so on.

Agreements concluded by the USSR with Iraq, Finland, Italy and other countries contain clauses on the non-extension to the Contracting Parties of some rights and privileges stemming from customs unions, and so on.

[1] *Vedomosti Verkhovnogo Sovieta SSSR*, No. 11, 1947.



On the basis of the principle of socialist internationalism and mutual assistance, the socialist countries have adopted certain forms of co-operation which grant special privileges to citizens of socialist countries which may not be automatically extended to other countries on the most favoured nation principle. These special privileges are as follows:

agreements on mutual entry and departure without visas, concluded by the Soviet Union with Bulgaria, Czechoslovakia, the GDR, Hungary, Poland and Rumania. Under these agreements, citizens of one Contracting Party who have travelling papers issued by the competent authorities of that Contracting Party may enter, leave, cross and sojourn on the territory of the other Contracting Party without its visa;

agreements on social security, concluded by the USSR with Bulgaria, Czechoslovakia, the GDR, Hungary and Rumania, extend to all types of social security of citizens legally established or being established by the Contracting Parties. The agreements cover all kinds of social security such as maintenance in case of sickness, maternity allowances, old-age and disability pensions and pensions to the families in the event of loss of the breadwinner, which are paid to citizens of one Contracting Party residing permanently on the territory of the other;

treaties on legal aid which the Soviet Union has concluded with the majority of the socialist countries;

agreements on co-operation and mutual assistance on border issues, concluded by the USSR with Hungary, Poland and Rumania.

Special privileges following from these agreements extend solely to citizens of the socialist countries which have signed them, and cannot be extended to citizens of other countries.

Special privileges for aliens may be granted under agreements with capitalist countries as well. For example, under an agreement concluded by the Soviet Union with the United States, Great Britain, the Federal Republic of Germany, and Canada, employees of the embassies of these countries were granted all diplomatic privileges and immunities on a reciprocal basis. The consular conventions concluded with Finland, Sweden and Great Britain also contain special privileges for consular workers, granting

them equal status with workers of diplomatic missions. Consular officials of these countries enjoy in the Soviet Union diplomatic privileges and immunities. The latter cannot be extended automatically to other countries for the absence of special agreements to that effect.

Besides national and most favoured nation treatment, international co-operation of states has also engendered special treatment of foreign crews of various means of conveyance since crossing the state frontier and for the time of their sojourn on foreign territory. These rights and duties of aliens are fixed in international transport agreements, in international merchant marine customs, and in special state rules established for aliens, members of crews of means of conveyance during their sojourn on the territory of a given state.[1]

It will be sufficient to our purpose to dwell here on the agreements concluded by the USSR with other countries on through air traffic and the universally recognised international custom in merchant shipping.

International agreements on through air traffic, concluded by the USSR with foreign countries on a bilateral basis, state that the law and rules of each Contracting Party shall be extended to the navigation and exploitation of aircraft flying in, out and over the territory of the other Contracting Party[2];

passport, customs, exchange, and sanitary quarantine regulation formalities shall be applied to passengers, crews and cargoes entering into or departing from the territory of the Contracting Party;

visas for the flight and cabin crews of an aircraft used on the contracted lines shall be prepared in advance for a term of at least six months, and shall be valid for any

[1] Article 4 of the Rules on the Entry into and Departure from the USSR of September 22, 1970, which came into force on January 1, 1971 (*SP SSSR*, No. 18, 1970, Item 139).

[2] Under Soviet law, "flying in or out of the USSR without due authorisation, deviation from the routes mentioned in the permit ... or any other violation of international flight rules are punishable with deprivation of liberty for a term of one to ten years or a fine of at least ten thousand roubles with or without confiscation of the aircraft (the Law of December 25, 1958, On Criminal Responsibility for Grimes against the State, Art. 21, "Violation of International Flight Rules", *Vedomosti Verkhovnogo Sovieta SSSR*, No. 1, 1959).



number of flights during the term for which they are made out;

crews engaged on the contracted lines may stop for the night and spend their free time in the capitals where the airfields of the Contracting Parties are, provided that they depart in the same aircraft in which they arrived or on their next scheduled flight;

each Contracting Party shall grant the other Contracting Party the right to keep on the territory of the Contracting Parties technical and commercial personnel of a definite size, necessary for the exploitation of the contracted lines.

All the terms of the agreement are carried out on the principle of reciprocity. Any attempt to limit the rights fixed by the agreement entails retaliatory measures.

The universally recognised international custom in merchant shipping establishes on a reciprocal basis the right of a merchant ship to touch at open ports, informing port authorities of the purpose of the visit. Crews of foreign merchant ships have the right to go ashore during the stay of their ships and spend the time in the port or the city on passes issued by the check-point following the presentation of certificates of identification which must be in proper order (not overdue and with the owner's photograph).

These rules are universally recognised. When, however, discriminatory measures are taken against the USSR, Soviet authorities have to retaliate. To quote a well-known fact, late in 1967 the United States unilaterally imposed some discriminatory restrictions on the free entry of Soviet ships into open ports. This compelled the Soviet Government to impose similar restrictions on US merchant ships from January 1, 1968. Agreement was reached on that point in 1973, after which Soviet and American merchant vessels could again freely touch at the open ports of the two countries.

The Soviet Union participates in the Geneva Convention on the Territorial Sea and the Contiguous Zone of April 29, 1958.[1] Under the Convention, foreign non-naval ships have the right of peaceful passage through the territorial waters of the USSR.

[1] *Vedomosti Verkhovnogo Sovieta SSSR*, No. 42, 1960.

While in Soviet territorial waters, foreign ships and their crews are obliged to abide by the laws, decisions and rules of the coastal state concerning shipping in the territorial sea; the use of radio communication, radiolocators, etc.; pilot service in places dangerous to navigation; anchorages; areas closed to navigation; the exercise of criminal jurisdiction on board a foreign ship in the territorial waters of the coastal state, and so on.

The authorities of the coastal state exercise criminal jurisdiction if the consequences of a crime committed on board a ship extend to the coastal state or break the rules of the territorial sea, and also if the shipmaster or the consul of the state whose flag the ship flies should turn to them for help. The authorities do not exercise their jurisdiction if a crime is committed on board a ship before the ship enters the territorial waters of the coastal state with the exception of the crimes mentioned in international agreements.

In keeping with the principle of state sovereignty, states allow aliens to enter their territory only after obtaining permission which is usually given in the form of a special endorsement (visa) made on the passport of the person entering. A visa is required also for passing across the territory of a state.[1]

Thus, there may be entry, exit, entry-exit, and transit visas. The Rules on the Entry into and Departure from the USSR state that entry into the USSR of foreign citizens and stateless persons is allowed to those who have passports or equivalent papers with a Soviet entry visa unless stipulated otherwise by an agreement between the USSR and the foreign state. Visas for entry into the USSR are issued by Soviet embassies, missions and consulates abroad. In individual cases they are issued by authorised Soviet representatives.

In accordance with the established international practice, aliens may enter the territory of a state without a visa

[1] Article 20 of the Law on Criminal Responsibility for Crimes against the State of 1958 penalises departure abroad, entry into the USSR or crossing of the border without a proper passport or permission from the proper authority. This Article does not extend to entry into the USSR by foreign citizens without a proper passport in order to take advantage of the right of asylum granted by the Soviet Constitution (*Vedomosti Verkhovnogo Sovieta SSSR*, No. 1, 1959).



if there is a special agreement concluded on a reciprocal basis. The rules on entry without a visa extend to aliens who do not propose to ask for permission to reside permanently in the country. The agreements on two-way travel of citizens without a visa, signed by the USSR with Hungary, Bulgaria, Czechoslovakia, the GDR, Poland, and Rumania, establish the following rule. Citizens of the Contracting Parties who have valid travelling papers issued by competent authorities may enter, leave, pass across or sojourn on the territory of the Contracting Party without a visa.

Entry without a visa into the territory of the USSR is also possible on the strength of international customs. Crews of foreign merchant ships may go ashore in Soviet open ports without a visa, just with their certificate of identification.

Registration is an indispensable condition of an alien's sojourn. When getting registered, an alien must show his identification papers, state the purpose of his arrival in the Soviet Union and how long he intends to stay, and is informed about the rules of residence, travel and conduct on Soviet territory. Aliens are registered by the following agencies:

Ministries of Foreign Affairs of the USSR and the Union republics as well as the diplomatic agencies of the USSR Ministry of Foreign Affairs;

the USSR Ministry of Internal Affairs and its subordinate agencies.

The Protocol Department of the Ministry of Foreign Affairs of the USSR registers the personnel of diplomatic representations and their families.[1]

[1] Usually the USSR Ministry of Foreign Affairs is notified by diplomatic representations in Moscow about the appointment of new members, the arrival and final departure of families, and, if need be, of the fact that a person has become or ceased to be a member of the family of a mission's worker.

Diplomatic representations also inform the Ministry about the engagement and dismissal of persons residing in the host country as staff members or home help who enjoy diplomatic privileges and immunities. Notification of the arrival and final departure of such persons may be given in advance (see Art. 10 of the Vienna Convention on Diplomatic Relations).

Citizens of the USSR possess in full the socio-economic, political, and personal rights and freedoms proclaimed and guaranteed by the Constitution of the USSR and Soviet statutes.

The Soviet socialist state of the whole people protects the rights and freedoms of citizens of the USSR and ensures their equality in all spheres of economic, political, social and cultural life.

A citizen of the USSR is obliged to observe the Constitution and Soviet laws, to uphold the dignity of citizenship of the USSR, to guard the interests of the Soviet state and help strengthen its might and standing, and to be true and faithful to his (her) socialist Motherland.

## I. General Provisions

*Clause 1. Uniform federal citizenship*

In accordance with the Constitution of the Union of Soviet Socialist Republics a uniform federal citizenship is established in the USSR.

Every citizen of a Union Republic is a citizen of the USSR.

USSR citizenship is the same for all Soviet citizens irrespective of the grounds on which it was acquired.

*Clause 2. Legislation of the USSR and Union Republics on Soviet citizenship*

The legislation of the USSR on Soviet citizenship consists of this Act, which defines the grounds and procedure for acquiring and losing Soviet citizenship in accordance with Article 33 of the Constitution of the USSR and other statutes of the USSR.

Matters of Soviet citizenship placed in the competence of a Union Republic by the Constitution of the USSR, the Constitution of the Republic, and this Act shall be decided by legislation of the Union Republic.

*Clause 3. Citizenship of the USSR*

The following are citizens of the USSR:

—persons who were citizens of the USSR on the date the present Act came into force;

—persons who were naturalised as citizens of the USSR in accordance with the present Act.

*Clause 4. Retention of USSR citizenship upon conclusion or dissolution of a marriage*

Marriage of a citizen of the USSR (male or female) to a person who is a citizen of a foreign state or a stateless person, and the dissolution of such a marriage, shall not entail any change in the citizenship of the spouses.

Acquisition or loss of USSR citizenship by one of the spouses shall not entail a change in the citizenship of the other spouse.

*Clause 5. Retention of USSR citizenship by persons domiciled abroad*

Domicile of a USSR citizen abroad shall not in itself entail loss of USSR citizenship.

*Clause 6. Protection of USSR citizens abroad by the state*

In accordance with the Constitution of the USSR citizens of the USSR abroad enjoy the protection and guardianship of the Soviet state.

*Clause 7. Inadmissibility of extradition of a USSR citizen to a foreign country*

A citizen of the USSR may not be extradited to a foreign country.

*Clause 8. Non-recognition of dual citizenship for a citizen of the USSR*

A person who is a citizen of the USSR shall not be recognised as a citizen of a foreign country.

*Clause 9. Stateless persons*

Persons resident in the USSR who are not citizens of the USSR and lack evidence of their citizenship of a foreign country are considered stateless persons.

### II. Acquisition of USSR Citizenship

*Clause 10. Grounds for acquiring citizenship of the USSR*

Citizenship of the USSR is acquired:
(1) by birth;
(2) by naturalisation as a citizen of the USSR;
(3) on grounds provided for by international treaties to which the USSR is a party;
(4) on other grounds provided for by this Act.

*Clause 11. Citizenship of children whose parents are citizens of the USSR*

A child both of whose parents were citizens of the USSR at the time of its birth is a citizen of the USSR irrespective of whether it was born on the territory of the USSR or outside its boundaries.

*Clause 12. Citizenship of children one of whose parents is a citizen of the USSR*

When there is a difference in the citizenship of the parents, one of whom was a citizen of the USSR at the time of a child's birth, said child is a citizen of the USSR.
(1) if it was born on the territory of the USSR;
(2) if it was born outside the USSR but one or both of its parents were domiciled at the time on the territory of the USSR.

When there is a difference in the citizenship of the parents, one of whom was a citizen of the USSR at the time of a child's birth, the citizenship of said child, born outside the USSR, shall be decided by agreement of the parents if at the time both parents were domiciled outside the USSR.

A child, one of whose parents was a citizen of the USSR at the time of its birth and the other a stateless person or else unknown, is a citizen of the USSR irrespective of its place of birth.



*Clause 13. Acquisition of USSR citizenship by the children of stateless persons*

The child of stateless persons domiciled in the USSR, born on the territory of the USSR, is a citizen of the USSR.

*Clause 14. Citizenship of children whose parents are not known*

A child living on the territory of the USSR, both of whose parents are not known, is a citizen of the USSR.

*Clause 15. Naturalisation as a citizen of the USSR*

Foreign citizens and stateless persons may be naturalised as citizens of the USSR at their request in accordance with this Act irrespective of their race and nationality, sex, education, language, or domicile.

### III. Loss of Citizenship of the USSR. Restoration of USSR Citizenship

*Clause 16. Grounds for loss of USSR citizenship*

Citizenship of the USSR shall be forfeited:
(1) as a consequence of renouncing USSR citizenship;
(2) as a consequence of being deprived of USSR citizenship;
(3) on grounds provided for by international treaties to which the USSR is a party;
(4) on other grounds provided for by this Act.

Loss of citizenship of the USSR also entails loss of citizenship of a Union Republic.

*Clause 17. Renunciation of USSR citizenship*

Renunciation of USSR citizenship shall be sanctioned by the Presidium of the Supreme Soviet of the USSR.

Renunciation of USSR citizenship may be refused if the applicant has not fulfilled his (her) obligations to the state or his (her) property commitments connected with the substantive interests either of citizens or of state, co-operative, or other social organisations.

Renunciation of USSR citizenship shall not be sanctioned if the applicant is under indictment or if there is a court judgment against him (her) liable to enforcement, or if the person's renunciation of USSR citizenship is against the interests of the national security of the USSR.

*Clause 18. Deprivation of USSR citizenship*

Citizenship of the USSR may be forfeited in exceptional cases by a ruling of the Presidium of the Supreme Soviet of the USSR if a person has committed actions bringing discredit on the calling of USSR citizen or damaging the prestige or national security of the USSR.

Deprivation of USSR citizenship shall not entail any change in the citizenship of the person's spouse or children.

*Clause 19. Restoration of USSR citizenship*

Persons who have lost citizenship of the USSR may be restored to such citizenship on their application by a ruling of the Presidium of the Supreme Soviet of the USSR.

### IV. The Citizenship of Children in the Event of a Change in Their Parents' Citizenship or in Case of Adoption

*Clause 20. Change in the citizenship of children in the event of a change in the citizenship of both parents*

When there is a change in the citizenship of parents as a consequence of which both become citizens of the USSR or lose such citizenship, the citizenship of their children under 14 years of age shall be correspondingly altered.

*Clause 21. Acquisition of USSR citizenship by children in the event of one parent acquiring USSR citizenship*

If one parent becomes a citizen of the USSR and the other remains a foreign citizen, a child may acquire USSR citizenship on application by the parent who has acquired USSR citizenship.

When one of the parents becomes a USSR citizen and the other remains a stateless person, a child living on the territory of the USSR shall become a citizen of the USSR.

When one parent becomes a citizen of the USSR and the other remains a stateless person, a child living outside the USSR may acquire USSR citizenship on application by the parent who has acquired USSR citizenship.

*Clause 22. Retention of USSR citizenship by children in the event of one parent renouncing USSR citizenship*



When one parent renounces USSR citizenship and the other retains such citizenship, a child shall retain USSR citizenship.

*Clause 23. Acquisition of USSR citizenship by children in cases of adoption*

A child who is a foreign citizen or a stateless person, adopted by citizens of the USSR, shall become a citizen of the USSR.

A child who is a foreign citizen, adopted by a married couple one of whom is a citizen of the USSR and the other a stateless person, shall become a citizen of the USSR.

A child who is a stateless person, adopted by a married couple one of whom is a citizen of the USSR, shall become a citizen of the USSR.

A child who is a foreign citizen, adopted by a married couple one of whom is a citizen of the USSR and the other a foreign citizen, may become a citizen of the USSR by agreement of the adopters.

*Clause 24. Retention of USSR citizenship by children in cases of adoption*

A child who is a citizen of the USSR, adopted either by foreign citizens or by a married couple one of whom is a citizen of the USSR and the other a foreign citizen, shall retain citizenship of the USSR. Such a child may be permitted to renounce USSR citizenship by the Presidium of the Supreme Soviet of the USSR on application by the adopters.

A child who is a citizen of the USSR, adopted either by stateless persons or by a married couple one of whom is a citizen of the USSR and the other a stateless person, shall retain citizenship of the USSR.

*Clause 25. The need for children's consent to a change in their citizenship*

A change in the citizenship of children aged 14 to 18 shall follow from any change in the citizenship of their parents or in the event of adoption only with the children's consent, expressed in writing.

## V. Review of Applications and Representations on Matters of Citizenship

*Clause 26. Bodies ruling on matters of Soviet citizenship*

The Presidium of the Supreme Soviet of the USSR shall rule:

on applications for naturalisation as citizens of the USSR by foreign citizens and stateless persons living outside the borders of the USSR;

on applications for naturalisation as citizens of the USSR by foreign citizens or stateless persons living in the USSR, where there is a previous ruling of the Presidium on their citizenship;

on applications for restoration of USSR citizenship, or for release from such citizenship, and on representations for deprival of USSR citizenship;

on other applications on matters of Soviet citizenship accepted for review by the Presidium.

Rulings on applications for naturalisation as citizens of a Union Republic and thus of the USSR by foreign citizens or stateless persons domiciled on the territory of the Union Republic shall be made by the Presidium of the Supreme Soviet of the Union Republic.

On matters of a change of citizenship the Presidium of the Supreme Soviet of the USSR or the Presidium of the Supreme Soviet of a Union Republic shall issue a decree; in case of refusal of an application on matters of citizenship, it shall pass a resolution.

Changes in citizenship shall come into force on the day of promulgation of the decree of the Presidium of the Supreme Soviet of the USSR or of the Presidium of the Supreme Soviet of the Union Republic, unless the decree states otherwise.

*Clause 27. Applications on matters of citizenship*

Applications on matters of citizenship shall be made as appropriate to the Presidium of the Supreme Soviet of the USSR or the Presidium of the Supreme Soviet of a Union Republic.

Persons living abroad submit such applications through the diplomatic or consular representatives of the USSR.



Applications on matters of citizenship by persons under 18 years of age shall be made by their legal representatives.

*Clause 28. Procedure for reviewing applications and representations on matters of citizenship*

The procedure for reviewing applications and representations on matters of citizenship, and the preparation and issuing of documents on these matters, and also for establishing citizenship of the USSR shall be defined by the Presidium of the Supreme Soviet of the USSR, and on matters of citizenship falling within the competence of a Union Republic by the Presidium of the Supreme Soviet of the Union Republic.

## VI. International Treaties

*Clause 29. Implementation of international treaties*

If an international treaty to which the USSR is a party has established rules other than those contained in this Act, the rules of the treaty shall prevail.

(signed) L. BREZHNEV
Chairman, Presidium of the
Supreme Soviet of the USSR

M. GEORGADZE
Secretary, Presidium of the
Supreme Soviet of the USSR

The Kremlin, Moscow
December 1, 1978
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Законодательство СССР и международные соглашения по вопросам гражданства. Сборник составил Г. Е. Вилков. М., 1964.

Сборник законов СССР и Указов Президиума Верховного Совета СССР. 1938-1961 гг. М., 1961.

Аваков М. М. Правопреемство Советского государства. М., 1961. Боголепов И. М. Вопрос о перемене гражданства в связи с браком (в Европе и Америке) (в журн. «Международная жизнь», 1972, № 6, с. 69-71).

Богуславский М. М. Международное частное право. М., 1974.

Богуславский М. М., Рубанов А. А. Правовое положение иностранцев в СССР. М., 1962.

Богуславский М. М., Рубанов А. А. Правовое положение советских граждан за границей. М., 1961.

Варин В. Ф. Уважение к правам человека — международный закон (К 25-й годовщине принятия Всеобщей декларации прав человека) (в кн. «Советский ежегодник международного права. 1973». М., 1975).

Василенко В. А. Вопросы правопреемства и гражданства в международноправовой практике Украинской ССР (в кн. «Советский ежегодник международного права. 1964-1965». М., 1966, с. 304-311).

Вилков Г. Е. Международноправовое регулирование вопросов безгражданства (в кн. «Советский ежегодник международного права. 1963». М., 1965, с. 260-270).

Вилков Г. Е. Международноправовое регулирование вопросов двойного гражданства (в кн. «Советский ежегодник международного права. 1959». М., 1960, с. 360-371).

Волова Л. И. Плебисцит в международном праве. М., 1972.

Гайдуков Д. А. Гражданство СССР. М., 1940.

Галенская Л. Н. Право убежища. Международноправовые вопросы. М., 1968.

Гельберг Л. Некоторые вопросы международноправового перемещения населения (в журн. «Известия высших учебных заведений. Правоведение», 1960, № 3).
Городецкая И. К. Гражданство детей (в журн. «Советское государство и право», 1971, № 4, с. 37-43).

Дурденевский В. Н. Закон о гражданстве Союза Советских Социалистических Республик (в кн. «Проблемы социалистического права», 1938, № 6, с. 47-65).

Евгеньев В. В. Правосубъектность, суверенитет и невмешательство в международном праве (в журн. «Советское государство и право», 1955, № 2).
Егорьев В. В., Лашкевич Г. Н. Правовое положение граждан и юридических лиц за границей. М., 1926.
Егорьев В. В., Лашкевич Г. Н. Правовое положение иностранцев в СССР. М., 1926.
Есаян А. А. Некоторые вопросы советского гражданства. Вопросы населения в практике Советской Армении. Ереван, «Митк», 1966.

Карташкин В. А. Права человека и развитие международного права (в кн. «Советский ежегодник международного права. 1974». М., 1976, с. 114-125).
Кириллова Т. Н. Общие положения гражданской правосубъектности иностранцев в СССР (в журн. «Правоведение», 1966, № 1, с. 103-110).
Кириченко М. Г. Гражданство Союза ССР (в журн. «Социалистическая законность», 1972, № 11, с. 9-12).
Кишкин С. С. Советское гражданство. М., 1925.
Колосов Ю. М. Ответственность в международном праве. М., 1975.
Котляревский С. А. Вопросы союзного гражданства и гражданства союзных республик (в журн. «Вестник Верховного Суда СССР и Прокуратуры Верховного Суда СССР», 1927, № 2[5]).
Крылов С. Б. Оптация и плебисцит и начало самоопределения в советских международных договорах (в журн. «Советское право», 1923, № 2, с. 43-55).
Курс международного права, т. III. М., 1967.

Левин Д. Б. Актуальные проблемы теории международного права. М., 1974.
Луиц Л. А. Правовое положение иностранцев в СССР по новому гражданскому законодательству (в журн. «Советская юстиция», 1962, № 12).

Матузов Н. И. Личность. Права. Демократия. Саратов, 1972.
Миронов Н. В. Правовое регулирование внешних сношений СССР. 1917-1970 гг. М., 1971.
Мовчан А. П. Международная защита прав человека (Всеобщая декларация и проекты пактов о правах человека). М., 1958.
Моджорян Л. А. К вопросу о субъектах международного права (в журн. «Советское государство и право», 1956, № 6).



Перетерский И. С. Советская инициатива в Лиге Наций по вопросу о равноправии женщин (в журн. «Советское государство», 1934, № 6, с. 66-67).

Русаков М. Брак и гражданство по советскому законодательству (в журн. «Административный вестник», 1927, № 10-11, с. 104-108).
Русинова С. И. Государственное устройство социалистических стран Европы (Территориально-национальная организация). Л., 1966.

Сафронов В. М. Правовое положение граждан СССР. М., 1969.

Трайнин И. П. К вопросу о гражданстве (в журн. «Советское государство», 1938, № 5, с. 51-70).
Тункин Г. И. Теория международного права. М., 1970.

Черниченко С. В. Личность и международное право. М., 1974.
Черниченко С. В. Международноправовые вопросы гражданства. М., 1968.
Черниченко С. В. Право наций на самоопределение и вопросы гражданства (в журн. «Советское государство и право», 1964, № 1, с. 110-114).

Шевцов В. С. Гражданство в Советском союзном государстве. М., 1969.
Шевцов В. С. Правовые основы советского гражданства. М., 1971.
Шевцов В. С. Советское гражданство. М., 1965.
Шевцов В. С. Советское гражданство и государственный суверенитет (в журн. «Советское государство и право», 1970, № 6, с. 39-47).
Шевцов В. С. Суверенитет Советского государства. М., 1972, с. 93-103.

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